

Critique on the Laws for the Protection of Women's Rights to Property in Nigeria and Uganda

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Abstract

Discrimination is apparent in cases involving women's rights to property under customary rules where, customary rules denies and discriminate women on their rights to own property. In this paper, the author has selected some customary rules which discriminate women against their rights to own and control property. As in Nigeria, the Benin customary law of inheritance, preclude women and children from inheriting a real property, in their rules it permits, the eldest son of a deceased person to inherit everything to the exclusion of all others. Even though, Section 43 of the 1999 Constitution as amended in 2011, guaranteed Nigerian citizens' rights to own property anywhere in the Country. As in Chiboga in Uganda, they are practicing customary rules which isolate women from community and made to leave on the patches of land kept for rearing animals. The community described such rule as "culture with stick" which pastoral men carry constantly. In Lira of Northern Uganda, the communities are practicing customary rules of women inheritance, where women were forced to live their matrimonial home together with their children upon the death of their husbands, the property of a husband will be inherited by the relatives of the husband. Article 26 of the 1995 Constitution of the Republic of Uganda gave all citizens' rights to own land. But the above provision is not been followed particularly, when it comes to distribution of an estate of a deceased person under customary law. This paper used Doctrinal legal research by traversing the relevant primary source of information constitutional provisions and case law, policies and Text Books, journal articles, and internet source of material as secondary sources of information throughout the analysis. The author has found that, the laws were not been followed, the women are afraid of taking the relatives of their husband to court and Islamic recognized women's rights to property than the customary laws. Recommendations: Strict punishment should be provided in the laws of Nigeria and Uganda to punish the offenders; Women should be enlightened to know that they have right to take the relatives of their husbands to court for remedy. Uganda shall amend their law discriminating women's rights to property particularly Succession Act of Uganda Cap 206 and Nigeria shall enact new law(s) of women's rights to property and insert affirmative action therein.

Keywords: Critique; Laws; Protection; Women's Rights; Property; Nigeria; Uganda.

Introduction

Protection of women's right to property in Nigeria and Uganda are the combination of laws protecting women's rights to property in the context of study the aims of these laws are meant to protect women against discriminatory practices of customary patriarchal. This paper is a critique of the legal framework for the protection of women rights to property the purpose is to determine the effectiveness of the laws for the protection of women's rights to property. To achieve this objective, the paper will critique the laws to ascertain the extent of compliance with the tenant of international and Regional laws protecting women's rights to property.¹ There are many laws which operates in Nigeria and Uganda, alongside customary laws which discriminate the right of women to own property.² Protection of women's rights to property now a days become imperative due to global calls particularly the Beijing Declaration in this Declaration women have gathered themselves to assert their rights informing the world that enough is enough The biggest achievements made in Uganda since the Beijing Declaration of 2009/2010 is in the education sector where the gender parity in enrolment in the primary education has reduced drastically and the achievement is was maintained over the last five years.³ The need to have basic needs for survival and the movement of the world in search for lands by extracting resources thereunder couple with the unplanned urbanization, resulted by the growing effect of climate change and the occurrence of deforestations,

¹ The provisions of the Nigerian Constitution 1999 as amended and the provisions of the 1995 the Constitution of the Republic of Uganda.

² Eghosa Ekhatior, women rights in Nigeria, available at <https://www.researchgate.net>publication>328276496> assessed on the 3/9/2019 around 12:45 pm.

³ Eastern African Sub-region support initiative for the Advancement of women, Uganda's progress on implementation of the Beijing Declaration and platform for Action: A critical Review of the twenty years' experience (report of EASSI, 2014), <https://Beijingwomen.pdf> available at www.google.com assessed on the 17/12/2019 around 5:34 pm.

the rights of women to lands have been affected and violated seriously worldwide regarding their rights of access to property.⁴

Considering to manner in which land acquisitions occurs in our communities without due regards of paying compensation of the land acquired brings about rampant to dwelled for search of lands in carrying their activates. These industrial activities together with the unplanned urbanization in African Countries that caused people to live in an undersigned settlement. Women are more seriously affected by land tenure system due to the effect of discriminatory laws and practices at the national, community and family level.⁵ In this regard, States is obliged to comply with their obligations to ensure that women have equal rights, including access to land and property rights in law and practice. Where the States have complied with it implies that, the state has adopted measures in preventing private companies, investors, powerful local elites, multilateral organizations, regional trade initiatives and family members from discriminating women in their rights of inheritance of since most of these lands devolves from inheritance.⁶

Critique on the Laws for the Protection of Women's Rights to Property

In this aspect, critique of the laws protecting women's rights will give us foresight in determining whether Nigeria and Uganda have adhered to International and Regional instruments. Where there is short of compliance the National laws must adjust their status in order to comply with the obligations they have made at International and Regional levels for protecting the rights of women in their pursue of basic needs particularly the rights for women to own property in Nigeria and Uganda.

The Nigerian Constitution 1999 (as amended in 2011)

Nigeria is a signatory to the Universal Declaration of Human Rights 1948 and other International and Regional Conventions. Nigeria vow to protect human rights on those declarations where it subscribed to the instruments. Upon subscriptions, Nigeria became a member state to that international and regional laws. In Nigeria, customary laws denied women their basic rights particularly their rights to own property even though right to own property is guaranteed under the 1999 constitution. The constitution expressly recognizes the right of Nigerian citizens to own property where it provides under various provisions as envisaged in the constitution.

Section 16 of the 1999 Constitution

Therefore, Section 16(1) of the 1999 Constitution⁷ intended to promote national prosperity and efficient dynamic and self-reliant economy to each and every citizen of Nigeria, on the basis of justice and equality among the citizens. The Constitution of Nigeria was explicit enough in making the national laws conducive environment to the citizens so that, the citizens will find the resources of the country accessible on the basis of social justice.⁸ The section did not segregate any one on the gender basis where if a woman intends to participate in an area of economic activities she has equal right with a man where she desire to do so, in an equal opportunity.⁹ The above provision suggest that, Nigeria has comply with the provisions of Article 3 of the International Covenant on Economic and Cultural Rights 1976 which Nigeria, had subscribed to promote nationally by means of domestication.¹⁰ Violation may occur where the right of Nigerian citizens to participate and engage themselves in any economic activities which Section 16(1) of the 1999 Constitution guaranteed to the Nigerian citizens is violated by Government or its agency. In this respect, an affected citizen has the right to institute an action in a court of law to seek redress. The international instrument provides for the right of equality to all persons under Article 7 of the Universal Declaration of Human Rights 1948 which provide that all persons have equality before

⁴ Alda Facio, "Insecure Land Rights for Women threaten Progress on Gender Equality and sustainable Development" (July, 2017) United Nations Human Rights, <https://www.google.com> assessed on the 20/11/2019 around 9:11 am.

⁵ Ibid.

⁶ Ibid.

⁷ 1999 Constitution of the Federal Republic of Nigeria, as amended in 2011, Section 16(1).

⁸ Ibid.

⁹ 1999 Constitution of the Federal Republic of Nigeria, as amended in 2011, Section 16(1) (c).

¹⁰ Article 3 of the International Covenant on Economic, Social and Cultural Rights 1976.

the law and equal protection of the law and the ability for the tribunals or human rights commissions to investigate and prove the violation of human rights.¹¹

Rights to private and Family life

The Nigerian Constitution, under Section 37 of the 1999 Constitution guaranteed every citizen of Nigeria right of privacy in their home.¹² Denial of a Nigerian citizen's right to privacy in his property is a violation of fundamental human rights which the Constitution will not allow. Most of the customary rules denied women to own their separate rights to a privacy in their property as can be seeing in the case of *Timothy v. Oforka (2008) NWLR PT 1091*, where the court of Appeal held that, "no law or custom that stand in the way our constitution should be allowed to stand no matter the circumstance."¹³ In this case the pronounced which the court does state that, court will not hold it hands to allow a customary law which denies women rights to own their distinct and separate privacy of their property to stand since, it is against the law of the land.¹⁴ But the question here is that, when will the Government will go round the whole country to ensure that all women have receive have privacy in their homes? It is obvious sometime in Nigeria women were attacked and even kidnapped in their home without justification.

Section 42 of the 1999 Constitution as Amended

This section confers to every individual in Nigeria, right to freedom from discrimination.¹⁵ The Constitution expressly stated that, a citizen of Nigeria shall not be discriminated by reasons of his or her ethnic group, place of origin, sex, religion or political opinion be subjected to any of disability or deprivation merely by the above circumstances to deny him any of his entitlements.¹⁶ Discrimination is apparent in cases involving women's rights to property under customary rules where, customary rules denies and discriminate women on their rights to own property. The laws are put in place but, the discriminatory rules continue to operate each day it will be hard someone may not wake up without hearing women's right to property has been violated particularly, under customary laws.

In this paper, the author has selected some customary rules which it rules, discriminate women against their rights to own and control property. For example, the Benin customary law, the Agbor and Kalabari customary laws of inheritance, which preclude women and children from inheriting a real property. The Benin customary law of inheritance, permit the eldest son to inherit everything including the real property of the deceased person to the exclusion of all others. However, the eldest son became the sole responsible for the upbringing of the family and continues to cater for his household.¹⁷

The court of first instance held in the case of *Ehigie v. Ehigie*,¹⁸ the eldest surviving son of a deceased person who performs the customary burial ceremonies of his father succeeds the deceased the father's real property. Where the eldest son failed to carry the funeral ceremony before his demise, the right of succession passes to his immediate junior brother who actually, perform the burial ceremony. On appeal to the Court of Appeal, the decision of the trial court of first instance was overruled on the ground that, customary law of succession was discriminatory in nature since, it denies women rights to property and it existence was not mentioned before the court by calling witnesses to testify that the custom exist and it rules is applicable in the society.

Section 43 of the 1999 Constitution as Amended

¹¹ Article 7 of the Universal Declaration Human Rights, 1948.

¹² 1999 Constitution of Federal Republic of Nigeria, Section 37.

¹³ *Timothy v. Oforka (2008) NWLR PT 1091*.

¹⁴ *Ibid*.

¹⁵ 1999 Constitution of Federal Republic of Nigeria, Section 42.

¹⁶ *Ibid*.

¹⁷ *Ibid*.

¹⁸ (1961) W.N.L.R 307 at 309

A citizen of Nigeria shall have the rights to acquire and own immoveable property anywhere in Nigeria, this right was provided by the Section 43 of the 1999 Constitution as amended.¹⁹ The constitution clearly stated that, equal rights has been given to men and women to acquire landed property anywhere in Nigeria provided he or she have followed the legal way or means of acquiring such property. Denial of such rights on men or women, amount to violation of rights to own and acquire property which can be redress in a court of law in Nigeria.²⁰ However, the effect of such violation is null and void because it has gone contrary to the provisions of Section 1(3) of the 1999 Constitution²¹ which makes any acts that are inconsistent with the provisions of the Constitution as unconstitutional and null and void.²² The act or acts will not have any legal effect in law and the consequence would be ultra vires. The selected customary rules as mentioned above have shown clearly that, customary laws in Nigeria discriminate women on their rights to own and access property as a means of ownership as in the case of *Ehigie v. Ehigie*,²³ cited above.

Under customary rules, they have the belief concerning women's rights to property since from the inception of the world that, women were created to serve men and they developed a concept concerning land, as thus: land rights are those rights of use, enjoy and exploit including benefit beneath to the land. Women land rights are fragile and separate depending upon on how the land devolves which sometime upon the type of marriages the husband and the wife entered. These also goes in line with age, number of children, their sex and the succession in terms of distributions of the estate in case of death.²⁴ So, for them, it is proper to assault the right of women since women in society are regarded as second-class citizens. One will wonder when would the government of Nigeria will come to rescue women to the mayhem, they are facing considering the provision of Section 43 of the 1999 Constitution which guarantees them right to own immovable property anywhere in Nigeria.²⁵

Section 44 of the 1999 Constitution as Amended

The Nigerian Constitution 1999 has guaranteed its citizen's rights to own immoveable property and that property cannot be taken away by government or its agency. But this right, is not automatic the government can acquire such property by means of compulsorily acquisition under sub section 1(b) of the above section.²⁶ This section state only payment of compensation would be given to a person affected by such acquisition by the government of Nigeria. Therefore, section 1(a) of the above Section mentioned that, the State shall make the prompt payment of compensation to a citizen. Payment of compensation to the affected people takes the form of delay sometime the payment may come almost ten (10) years after the compulsory acquisition and after all efforts to receive the compensation has wiped out from the mind of the victims. This form of delay amount of denial of Nigerian citizens' right to own immovable property. This section would be read together with the provisions of Section 29 of the Land use Act 1978 which provide for the payment of compensation in case of compulsory acquisition.²⁷

The Nigerian Land Act 1978

The Nigerian Land Act is a statutory law, regulating the procedure for converting customary rights of occupancy to statutory rights of occupancy. Section 1 of the Act²⁸ made emphasis that, all lands in the State of federation are vested on the Governor of that State. Here, a Governor of a state in the Federation have the power to revoke any certificate of occupancy even though a person is a bonafide owner of that property.²⁹ The Section, empowers a Governor of a state to revoke a certificate of occupancy here it appears that a governor of a state has overriding

¹⁹ 1999 Constitution of Federal Republic of Nigeria, Section 43.

²⁰ Ibid.

²¹ 1999 Constitution of Federal Republic of Nigeria, Section 1(3)

²² Ibid.

²³ (1961) W.N.L.R 307 at 309

²⁴ Tajudeen and Abdulrasheed, "Women and Land Rights Reforms in Nigeria", TS9, page 4. Available at www.goole.com assessed on the 11/9/2019 around 2:45 pm.

²⁵ 1999 Constitution of the Federal Republic of Nigeria (as amended in 2011), Section 43.

²⁶ 1999 Constitution of the Federal Republic of Nigeria (as amended in 2011), Section 44(1) (b).

²⁷ Land Use At, 1978, Section 29.

²⁸ Land Use At, 1978, Section 1.

²⁹ Land Use At, 1978, Section 28.

power to do whatever it like. This power, in some instances are misuse and over use particularly, where the affected citizens did not vote for the ruling party as Nigerian are practicing democracy. The section further state that, a Governor of a state cannot take such property unless for overriding public interest. For instance, providing the public with building schools, hospitals and other social amenities for the use of public perse ³⁰ public interest now a days cannot be known considering many factors such as expansion of the house of a governor which naturally suggest luxury.

Legal Framework for Uganda

The Government of Uganda in order to promote and protect human rights abide by the provisions of Universal Declaration of Human Rights 1948 enacted in its law's provisions for Human rights protection.³¹ As a member nation to almost all the International and Regional Instruments had promulgated laws of human rights protection. In 1995, the country enacted new Constitution which was significant as the supreme law of the land with significant gender provisions that have been replicated in some other laws, such as the Local Government Act (LGA) of 1997. ³² Uganda has a dual framework for land governance which comprised the Constitution of the Republic of Uganda 1995 and the Land Act 1998 those laws contained legal pluralism by clearly recognizing customary rights to property, while the Land Act, provide for formal protections for women's land rights.³³ The Act, defines customary land rights and lays out procedures for registration and administration of customary tenure regarding property rights. With an estimated 80% of all lands in Uganda were held under customary tenure, customary rules for land governance plays a major role in determining women's land and property rights.³⁴ Where disputes arose normally, the disputes shall go to the Land Board for settlement of such disputes which the Board sometime may call oral evidence from the community. The testimony of the community will be used to arrive at the decision in resolving disputes which sometime may concern boundary disputes or the root of title of the disputed land.

Article 21 of the 1995 Ugandan Constitution

The 1995 constitution of the Republic of Uganda provide for equal rights to the citizens of Uganda in all spheres of political, economic, social and cultural rights. This means that, no body shall be deprived of engaging in any activities to earn his livelihood. Any violation concerning person's political, economic, social and cultural rights is against the Constitution.³⁵ This equality of the sphere of life, given to the Ugandan citizens was in line with the provisions of Article 2 and Article 7 of the Universal Declaration of Human Rights 1948. But how it could be possible that the Government of Uganda may guarantee uniformity in political, economic, social and cultural right to all citizens of Uganda looking at the emergence or discovery of petroleum in Uganda how many people will be opportune to benefit from the royalty coming from the petroleum sector.

Article 26 of the 1995 Ugandan Constitution

The right to own and control property was provided under Article 26 of the 1995 Uganda Constitution, which allows every person to acquire property according to his means, accessing and controlling the ownership of land by the citizens of Uganda could either be individually or combination with others.³⁶ The government of Uganda have no right to deprived it citizens to own and control land unless in some certain circumstances when it comes to overriding interest. Here, men and women have equal rights to acquire and control land.

³⁰ Land Use At, 1978, Section 28(1).

³¹ Article 2 of the Universal Declaration of Human Rights 1948

³² Ibid.

³³ Leslie Hannay, "Women Land Rights in Uganda, (2014) Centre for Women's Land Rights available at [https:// www.google.com](https://www.google.com) assessed on the 14/9/2019 around 7:59 pm.

³⁴ Leslie Hannay, "Women Land Rights in Uganda, (2014) Centre for Women's Land Rights available at [https:// www.google.com](https://www.google.com) assessed on the 14/9/2019 around 7:59 pm.

³⁵ The Constitution of the Republic of Uganda 1995, Article 21.

³⁶ The Constitution of the Republic of Uganda 1995, Article 26

However, the Constitution of Uganda 1995, provided under Article 237 that, the ownership of all lands in Uganda is vested on the citizens of Uganda, the State shall hold for and on behalf of the citizens of Uganda.³⁷ Article 244 of the Republic Constitution of Uganda, provide that the ownership and control of lands in Uganda belongs to Government of Uganda³⁸ Article 237 and 244 of the Uganda Constitution are in conflict with one another here, there is need on those provisions to reconcile or to be amended.

However, this suggest that, the ownership of all lands in Uganda are owned and control by the citizens of Uganda this is not true position in Uganda. Looking at the situation, where the government want acquire land for public interest only payment of compensation is given to the citizens.³⁹ This, goes to the fact that restrictions is placed on the mode of acquiring lands in Uganda, where land had been taken from the citizen's for public interest, this acquisition contravened the provisions of the Universal Declaration of Human Rights 1948 for the sole reason that there is no common concern on the side of the Government, which was the main intent and purposes of the Convention of Universal Declaration of Human Rights 1948.⁴⁰ The Constitution of Uganda 1995, also recognized four (4) types of ownership which were rooted under customary lands tenure system of the Country. These customary land tenures are: the freehold, leasehold, Mailo and customary land tenure operated within the regions.⁴¹ These modes of ownership have a lot of problem which up to this time Government is unable to resolve the problems.

Article 31 of the Uganda Constitution

This provision, provide for equal rights to men and women during marriage and after marriage on any property they may acquire within the circle of the relationship this means that, property acquired by men or women is distinct and separate right with property acquired jointly.⁴² This right, goes to the extent that, property of women before marriage and after shall not be taken away by their husbands or relatives of the husband. Refusal by the relatives of a deceased person to give a widow her separate share amount to violation of the right guaranteed the citizens of Uganda under Article 31 of the 1995 Constitution. In Uganda, the amount placed in securing registration on a joint property where a woman wants to have her separate property to be registered many women cannot afford to pay. Instead of this provision to give equal right to men and women the provision is compounding the problem of lack on ownership on women since men dominate the economic sphere in Uganda.

The author here also, selected some customary rules in Uganda to represent the remaining customs in this analysis. As in Chiboga in Uganda, they are practicing customary rule which isolate women from community and made them to leave on the patches of land kept for rearing animals. The community described such rule as "culture with stick" which pastoral men carry constantly.⁴³ In Lira of Northern Uganda, the communities are practicing customary rule of women inheritance, where women were forced to live their matrimonial home together with their children upon the death of their husbands and the property of a husband, will be inherit by the relatives of the husband. Under Uganda legislations, widows are guaranteed right of inheritance to the property of their husband under Article 31(2) of the 1995 constitution.⁴⁴ In Uganda, inheritance is governed by statutory and informal customary law and the Islamic law.⁴⁵ The 1995 Constitution and the Succession Act (amended) Decree No. 22 of 1972.

Article 33 of the 1995 Uganda Constitution

³⁷ Article 237 of the Republic Constitution of Uganda 1995.

³⁸ Article 244 of the Constitution of Republic of Uganda, 1995.

³⁹ Article 26 of the Republic Constitution of Uganda 1995.

⁴⁰ Universal Declaration of Human Rights 1948

⁴¹ The Constitution of Uganda 1995, article 237(3) a-d.

⁴² 1995 Constitution of the Republic of Uganda, Article 31.

⁴³ Foundation of Human Rights Initiative, "Women Rights in Uganda Policy and Practice," (Report, 2009), at page 7, available at www.google.com assessed on 2/10/2019 around 2:30 pm.

⁴⁴ 1995 Constitution of the Republic of Uganda, Article 31(2).

⁴⁵ Ibid.

Article 33 of the Uganda Constitution recognized the right of women and sets procedures for affirmative action for all “marginalized groups” by gender, sex or any other discriminatory cultural practices.⁴⁶ Affirmative action implies that, women in Uganda, shall have rights over their personal property, when it comes to any transaction involving her property. Women’s consent must be sought and obtained before dealing on such land. Where there is violation on such rights the transaction will be set aside by the court. With all this provision under Article 33 of the 1995 Uganda Constitution women are not entitle to own and control their property as in the customary law of Chiboga and in Lira communities of Uganda. Women’s land rights have been reflected in a number of policy Frameworks, such as the Gender Policy 2007, Land Act 1998 as amended and Land Policy 2013.

The Ugandan Land Act 1998

The Land Act of 1998,⁴⁷ Uganda Land Act, is the statutory law in the country regulating the administration of lands for avoidance of conflict of ownership.⁴⁸ The Act, witnessed some amendments almost three (3) times.⁴⁹ The amendment came sometime in 2011, 2004 and in 2010 respectively. The amendments came up as a result of the grey areas in the Constitution of 1995 this relate to areas which the constitution did not cover particularly, in respect of the Ugandan’s property rights.⁵⁰ Land Act 1998, re stated and recognized four (4) forms of land tenure system operate in Uganda, which the Constitution of 1995⁵¹ also recognized. The Act, provide that property rights can only be held through Customary, Freehold, Leasehold and Mailo.⁵²

Section 4 of the Land Act 1998

The Land Act guaranteed Uganda citizens right to own land, under the Land Act 1998, Section 4 of the Act Provide that, any person(s), communities or individuals holding customary title may upon an application accompanied by relevant documents may apply for conversion of their customary right of occupancy to the government by payment of a prescribed fees register their rights.⁵³ The land Commission was saddled with responsibilities of managing lands in Uganda on behalf of the government.⁵⁴ The Act, prohibits the application of customary law where it prohibits women their rights to own and control land.⁵⁵ This provision even though guaranteed Ugandans the opportunity to apply for conversion of their title the law does not stare the amount to pay in every title within the recognized four customary land tenure. Saddled the responsibilities on another body to carry administration of lands in Uganda is amount to a denial of such right under Section 4 of the Land Act 1998.

Section 27 of the Land Act 1998

The Section provide for the right of women that, their rights to own property can come not only through customs or traditions but, in any of the other ways such as inheritance and through property acquired before marriage or after marriage.⁵⁶ The provision makes it an offence to deny women their rights to property. Denial of women on their rights to own property contravened the provisions of the International Covenant on the Elimination of All Forms of Discrimination against Women 1999,⁵⁷ also contravened the provisions of Section 27 of the Land Act, 1998 which recognize the right of women to acquire property. Section 27 of the Land Act 1998 guarantees women

⁴⁶ Lastarria- Cornheil, Gender Equity and Land (2014) available at <https://link.springer.com?chapter> assessed on 14/10/2019 around 4:00 pm.

⁴⁷ The Ugandan Land Act, 1998, Cap 227.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Leslie Hannay, “Women Land Rights in Uganda, (2014) Centre for Women’s Land Rights available at [https:// www.google.com](https://www.google.com) assessed on the 14/9/2019 around 7:59 pm.

⁵¹ The Constitution of Republic of Uganda, 1995

⁵² The Constitution of Republic of Uganda 1995, article 237 (3) (a-d).

⁵³ The Constitution of Republic of Uganda 1995, article 237 (4) (a-b).

⁵⁴ The Constitution of Republic of Uganda 1995, article 239.

⁵⁵ Land Act 1998, section 27.

⁵⁶ Land Act 998, Section 27.

⁵⁷ Article 7 of the International Covenant on the Elimination of All Forms of Discrimination Against Women 1999.

right on the ir property but still women are suffering in Uganda when their husbands died as a result of the act or acts of the relatives of a husband.

Section 39 of the Act 1998 (Amended in 2004)

The Section gives protection women's property, where any transaction involving spouse residence the Section categorically state that, their prior consent of the spouse must first seek and obtained before dealing on such land.⁵⁸ It is significantly under the Act that, Land Management Bodies shall have female's representatives. Land Commission in its composition must have two (2) female within their membership of five (5) members. The Land District Board one-third (1/3) of the membership must be female. The Area Land Committee its membership of four (4) members one must be female.⁵⁹ The members of the Communal Land Association one-third (1/3) of its members must women in case, of any transaction relating to communal ownership and management.⁶⁰

Looking at the Uganda Land Act 1998 (as amended) particularly under Section 39 of the Act, give protection on women's rights to land but, it fails to established co- ownership or joint ownership of spouses which such provision was not provided under the Land Act.⁶¹ Also, the failure of the land Act to incorporate and protect the rights of spouses was fatal in providing protection to the rights of women. The failure in protecting spouses contravened the provision of Article 2 and Article 7 of the Universal Declaration of Human Rights 1948 as well as Article 2 of the African Charter on Peoples and Human Rights 1968 which encourage protecting human rights in all sphere of life.

National Land Policy 2013

The National Land Policy 2013 of Uganda, was enacted by the parliament of Uganda in February, 2013.⁶² The purpose of this policy, is to provide a regulatory framework in the land administrative governance in respect of government's lands acquired for natural resources, ecological and touristic purposes for the benefit of the common peoples of Uganda. These lands may not be sell or alienated except by means of license concessions or permit.⁶³ This policy, even though it is inform of Draft failed to overcome the discriminatory practices against women relating their rights of inheritance.⁶⁴ This policy, failed to recognize the rights of women on property rights, when the property of a woman was confiscated for public interest, in this regard only payment of compensation will be allowed. Those Government lands acquired for the specific purposes mentioned above the revenue generated are not meant for the benefit of the common man as the aim of the policy. The revenues coming from touristic, ecological natural resources (petroleum resources) the common man of Uganda have no knowledge on the revenues from those mentioned areas.

However, even where the policy, try to protect women's rights it only calls for reforms through the Ugandan Ministry of Lands Housing, and Urban Development which is not the proper channel to follow.⁶⁵ Primarily reforms or amendment is done by the legislature not through Ministry of Lands and Housing as a matter of rights. The failure of this policy to recognized the rights of women violate Article 5 and 7 of the Convention on the

⁵⁸ The Land Act, 2004 as amended in 2010 section 39.

⁵⁹ Land Act 1998 of Uganda.

⁶⁰ Ugandan Land Act 1998, Section 17 (4) (b).

⁶¹ Asiimwe J, (2001), "Making Women's Land Rights a Reality in Uganda: Advocacy for Co-ownership by Spouses", 4 (1), Yale Human Rights Development. Available at <https://www.google.com> assessed on the 16/9/2019 around 10:15 am.

⁶² Ugandan Ministry of Lands, Housing and Urban Development report on National Land Policy, approved Draft of February, 2013. Available at <https://www.google.com> assessed on the 16/9/2019 around 10:20 am.

⁶³ Asiimwe J, (2001), "Making Women's Land Rights a Reality in Uganda: Advocacy for Co-ownership by Spouses", 4 (1), Yale Human Rights Development. Available at <https://www.google.com> assessed on the 16/9/2019 around 10:15 am.

⁶⁴ National Land Policy 2013, section 4 and 10. These provisions had tried to address women's discrimination in Ugandan Law of Succession

⁶⁵ Ibid.

Elimination on All Forms of Discrimination Against Women⁶⁶ which enjoy State parties to take all the necessary measures to eliminate all forms of discrimination against women. The state shall take measures within its sphere of powers to alleviate women from hardship they are facing by enacting policies which will help them to realize their potentiality as human but, not on policies which will not help women in their pursue of their rights.⁶⁷

Registration of Titles Act 1924

Uganda Registration of Titles Act, 1924 applies to all Freehold and Mailo but, does not apply to Customary Tenure due to absence of non- recognition. Customary Tenure holder must first convert his or her title to freehold before being registered.⁶⁸ Under Registration of Titles Act, 1924 certificate issued under the Act, is conclusive evidence of ownership. Where a person's name appears on a certificate, that person is regarded as the rightful owner.⁶⁹ The Act, disclaims any law which delimit the rights of a married women to own property because the Act expressly list fraud as a factor rebutting the presumption of ownership where a husband is alleged to have defraud his wife on her property.⁷⁰

The above situation suggests that, in what ways did a married woman's rights to matrimonial property would be protected if her name is not on the certificate? In some instances, it would be unclear where the certificate of occupancy bears the name of the husband it would also, uncertain how the distribution of the estate would be at the dissolution of the marriage.⁷¹ This leaves the wife vulnerable to be dispossessed on the face of a strong societal pressure and the presumption that, societies have the belief that, men naturally are the owners of the property.⁷² The resultant effect of dispossession of a women's rights on the side of the Act and the failure to give protection on women on her separate property amount to violation of women rights and contravention of the provisions of Universal Declaration of Human Rights 1948 and the Convention on the Elimination on All forms of Discrimination Against Women.⁷³

Inheritance Under the Formal Legal Structure

Inheritance under Succession Act⁷⁴ is characterized with discrimination on women's rights to property and expressly recognized women's right to inherit their husband's property.⁷⁵ This permissible is in line with the Constitutional provisions particularly Article 26 and Article 33 of the 1999 Constitution of Republic of Uganda but, the recognition under the Act is limited since, it does not recognized customary tenure. It is evidently known that rights of women naturally come from customary ownership, the advocacy in the Act, that a holder of customary tenure must first convert to freehold or Mailo before a certificate would be issued. Placing conditions of registration means that, it denies women's from having ownership of land in Uganda. As the constitutional court ruled in 2007 that, part of the Succession Act and that of the Penal Code are unconstitutional and therefore void on ground of gender biased.⁷⁶

However, in the case, *Law Advocacy for Women in Uganda v Attorney General of Uganda* Constitutional petition, two (2) laws were challenged on the ground of discriminatory against women. Section 154 (2) of the penal code which provide that, a married woman not married man is guilty for an offence where she was found having sex with another man and, if it were the man, he is not guilty of adultery.⁷⁷ Succession Act was also challenged on

⁶⁶ Article 5 and 7 of the Convention on the Elimination on All Forms Discrimination Against Women 1969

⁶⁷ National Land Policy 2013

⁶⁸ Ibid.

⁶⁹ Registration of Titles Act, 1924.

⁷⁰ Registration of Titles Act, 1924, section 3.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Article 5 and 7 of the Convention on the Elimination of All Forms of Discrimination Against Women 1969

⁷⁴ Succession Act (amendment) Decree 22/27 of 1972

⁷⁵ Ibid.

⁷⁶ *Law Advocacy for Women in Uganda v Attorney General of Uganda* Constitutional petition Nos. 13/05/& 05/06, (2007) UGCC 1, April 4, 2007. Available at <https://www.google.com> assessed on the 16/9/2019 around 11:52 am.

⁷⁷ Ugandan Penal Code, section 154 (2).

the ground of discriminatory against female heirs. The Constitutional court found section 154 (2) of both the penal code and sections 2(n) (i) (ii), 15, 16, 27 43 and 44 of the succession Act, are unconstitutional and therefore null and void.⁷⁸

Therefore, the above provisions were challenged on the ground of discrimination against women's and thereby contravened Article 2 of the Universal Declaration of Human Rights 1948 which states that, all human beings are born freely and equally before the law and any iota of discrimination violates the rights of human beings. This also is incongruous with Article 5 and 7 of the Convention on the Elimination of All Forms of Discrimination against Women 1969. As well as the provisions of Article 2 of the African Charter of Peoples and Human Rights 1968.

Succession Act of Uganda⁷⁹ favors' male then women, where it a portion 15% to the widow of a deceased person and gives 75% to male lineal their relatives. This also goes to the polygamous marriage where the deceased survives with many wives their shares would also be 15% of the estate of a deceased person.⁸⁰ Succession Act, excludes the residential premises occupies by the wife or the child from being taking into account while distributing the estate of a deceased person.⁸¹ It is noted that, under the Succession Act, widows maintenance and occupancy rights is terminated in the event that the widow have re- marries.⁸²

Customary Law Framework of Nigeria

In most communities, women are not entitled to own land even though they were born in the community. Married women are given more respect for a sole reason that, they had been clothed with the status of their husbands under customary law. As in the southern part of the Nigeria, it is considered perfect to assault women such assault is regarded as lesser offence.⁸³ Under customary and traditional practices, early marriage in some part of Northern Nigeria are still practice as it has been observed that, the abuse of natural rights of a woman originated from her birth and is expected to end at her demise.⁸⁴

Instances of Customary Framework

Communities in Nigeria, members of the community's segregate women status by denying them rights to own property based on their beliefs. Women receives respect only and unless when they are married. What the society believed is that, a woman can only own possessory rights on a property, and upon the demise of her husband she has no right to remain in the house.⁸⁵ Even though Section 43 of the 1999 constitution of Nigeria guaranteed each and every citizen of Nigerian right to own property anywhere.⁸⁶ As in the case of *Mojekwu v Mojekwu*⁸⁷ where the facts of the case read as thus:

The appellant's declaration was of title to land, as the only surviving male relative to his Uncle, who died in 1944 and his father who died in 1963, he contended that, he was entitled to inherit the property his Uncle from the Mgbalekeke family of Onitsha under a Kola tenancy land tenure system. The appellant claimed that property, pursuant to a native law and custom of Nnewi, in particular the custom of Oli-ekpe. The custom prohibits the inheritance rights of females and provides that, the eldest male of the family will inherit.

⁷⁸ Law Advocacy for Women in Uganda v Attorney General of Uganda Constitutional petition Nos. 13/05/& 05/06, (2007) UGCC 1, April 4, 2007. Available at <https://www.google.com> assessed on the 16/9/2019 around 11:52 am.

⁷⁹ Succession Act (amendment) Decree22/27 of 1972

⁸⁰ Succession Act (amendment) Decree22/27 of 1972, section 27.

⁸¹ Succession Act (amendment) Decree22/27 of 1972, section 30.

⁸² Succession Act (amendment) Decree22/27 of 1972, sections 46(b) (2) and 2 (8) (a).

⁸³ www.fao.org/gender-landrights-database/availableatwww.google.com assessed on the 28/3/2019 around 11:57 am

⁸⁴ N.O.Odiaka, *The concept of gender justice and women's rights in Nigeria*; journal of sustainable Development and Policy 122608 available at <https://www.ajol.info/index.php> assessed on 28/3/2019 around 12:16pm.

⁸⁵ FOA website, available at www.foa.org/gender-landrights-database assessed on the 28/3/2019 around 11:57 am.

⁸⁶ Section 43 of the Nigerian Constitution 1999, as amended in 2011.

⁸⁷ (2000) 5, N.W.L.R. (PT.657) Page 413.

The Court of Appeal held that⁸⁸ the Nnewi custom of Oli-ekpe is discriminatory to women's rights to property and, any form of societal norms which is discriminatory on grounds of sex, race is unconstitutional and therefore against the principles of an egalitarian society.⁸⁹ The court went further to state that, a court of law, cannot invoke a customary law which is repugnant to natural justice, equity and good conscience. Therefore, the personal law of the appellant is not applicable in this case.⁹⁰ However, looking at the scenario of the above case, Nigerian society, some customary framework as mentioned inter alia denied women rights to property which is against the constitutional provisions of Nigeria.⁹¹ The denial also violate Section 42 of the 1999 constitution (as amended) which gives equal enjoyment to each and every Nigerian citizen regardless of his sex, race and status.⁹² The case of *Ngwo v. Onyejena*,⁹³ has similar pattern with the case of *Mojekwu* cited above where the facts of the case discriminate women's rights to own property but, when the matter went to Appeal, the Supreme Court held as follows;

“The Benin customary belief of Succession which applies the Doctrines of Primogeniture which denies women rights to inherit a real property within the Estate of their father is unconstitutional.”

The above customary law, allows the eldest son of the deceased person to inherit the real property of a deceased person if, he performs the funeral ceremonies. This rule of customary law contravened Article 5 and 7 of the Convention on the Elimination of All Forms of Discrimination Against Women thereby entitled to be set aside.⁹⁴

In Nigeria, under Agbor customary law, their custom denies all other kind of marriage except, the marriage conducted in accordance with a polygamous marriage. This type of marriage allows the sharing of the estate of a deceased person among the polygamous children. Where the deceased has no a polygamous child his estate will automatically revert back to his relatives. As in the case of *Otele v. Otele*⁹⁵ the custom states that, where there are women and wives that survives the deceased person, the Agbor customary law will not recognize them since they are not from polygamous marriages. This denial, is unconstitutional and against the spirit, intent and purposes of International laws.

Another customary law that deprived women from inheriting a real property (land) is practice by the KALABARI community of the riverine area of Nigeria. The right to inherit depend on the type of marriage a member solemnized at the time of his lifetime. The marriages are of two (2) types:

- i. Iya marriages recognize only the right of an eldest son of a deceased person that, he has the right to the inheritance of a large share in the estate of his deceased father. He will inherit as aforesaid alongside his brothers whose inheritance are small when compare with the share of their brother.
- ii. Igwa marriage, is the marriage which entitles the distribution of an estate on a particular beneficiary based on the matrilineal status. Matrilineal status means that, the deceased children will only inherit from their mother relatives. This type of marriage does not recognize the inheritance of woman to inherit her deceased father upon his death.

The customary Framework of Kalabari community is discriminatory thereby contravened the provisions of Section 43 of the 1999 Constitution⁹⁶ which guarantee the citizens of Nigeria rights to own property. The custom also contravened Article 5 and 7 of the Convention on the Elimination of All Forms of Discrimination Against Women.⁹⁷

⁸⁸ *Mojekwu v Mojekwu* (1997) 7 NWLR PT 283, PAGE 1. available at [https:// www.google.com](https://www.google.com). <https://www.equirightstrust.org/default/files/ertdocs/mojekwu>

⁸⁹ *Ibid*

⁹⁰ *Ibid*

⁹¹ Section 43 of Nigerian Constitution 1999 as amended in 2011.

⁹² S.42(1)(2), 1999 Constitution of the Federal Republic of Nigeria (as amended)

⁹³ (1964) 1 All NLR 1352

⁹⁴ Article 5 and 7 of the Convention on the Elimination on All Forms of Discrimination Against Women 1969

⁹⁵ (1979) 2 L.R.N.,324

⁹⁶ Section 43 of the 1999 Constitution as amended in 2011.

⁹⁷ Article 5 and 7 of the Convention on the Elimination on All Forms of Discrimination Against Women 1969

Distribution of an Estate Under Islamic Law in Nigeria

Islamic law, is the law of all Muslims in world and same applies to Nigerian and Ugandan Muslims because of its universal application. Islamic law, provides the mode of sharing an estate of a deceased person in accordance with provisions of the Holy Quran.⁹⁸ This paper selects Nigeria and Uganda as case study, Islamic laws, prescribed the modes of distribution of an estate of a deceased person according to the provision of the Holy Quran.⁹⁹

1. Quran 4 v 11 provide

For male the equivalent of two (2) females, if there be women more than two (2) then theirs is two third (2/3) of the inheritance, and if there be one (only) then half. To his parent parents a sixth (1/6) if he has a son; and he has no son, his mother appertains the third (1/3); if he has brethren the mother sixth (1/6).

2. Quran 4 v 12 provide

Women have fourth (1/4) of the estate of their husband where there is no child, but if there is a child then eight (1/8).

3. Quran 4 v 176 provide

If a man dies childless and have a sister her share is half the heritage, he would have inherited from her has she died childless. And if there be two (2) sisters then there are two third (2/3) of the heritage, and if brethren men and women unto the men is equivalent of two females.

Customary Law Framework of Uganda

In Uganda communities, women and men have no equal rights when it comes to distribution of real property they may receive some matrimonial goods but not landed property of the deceased.¹⁰⁰ Traditionally, women in Uganda do not own land, even though estimation have shown that women performs almost all farming activities but unfortunately women occupies only 7% of agricultural land.¹⁰¹ Land generally, belongs to the family or clan and is held by men as of right, women may in some instances have the right to live and farm. Discriminatory customary laws in Uganda, resulted many women to lose title to land when their husbands died.¹⁰²

Instances of Customary Framework

The customary Framework of *Chiboga* in Uganda, they are practicing customary law, which isolate women from community and cause them to leave on the patches of land kept for rearing animals. The community described such rule as “culture with stick” which pastoral men carry constantly.¹⁰³ The author, have selected some communities in Uganda in order to analyze some of the discriminatory practices against women reference is made on Chiboga and Lira of the Northern Uganda, in particular to Lira, the communities are practicing customary law of inheritance, where women were forced to live the matrimonial home together with their children upon the death of their husband by the husband’s relatives. Lira communities, also have customary law for harassing wives at the time of harvest, where a husband will claim all whatever his wife might have harvested in the year.¹⁰⁴

Another customary law in Lira, is their customary law which refused to allow women who were abducted by rebels or abductors to come back home. These women were either remind in the bush than to face the customary practices, if they have children with the abductors they were often rejected by their parents, relatives, husbands

⁹⁸ The Quran and the Hadith of the Holy Prophet are primary sources of Sharia.

⁹⁹ Quran 4: 11

¹⁰⁰ Geoffrey B, Daily Monitor Newspaper, (20/2/2019), “Just like Men” – Women –have –right-own-land/689364-4990614-gend/4 available at www.google.com assessed On the 2/10/2019 around 12:45 pm.

¹⁰¹ Uganda National Development Plan Report, (report 2010/2011-2014-2015) at page 8, available at www.google.com assessed on 2/10/2019 around 12:53 pm.

¹⁰² Succession Act Cap 162 of 1906 as amended in 2011, Section 27.

¹⁰³ Foundation of Human Rights Initiative, “Women Rights in Uganda Policy and Practice,” (Report, 2009), at page 7, available at www.google.com assessed on 2/10/2019 around 2:30 pm.

¹⁰⁴ Foundation of Human Rights Initiative, “Women Rights in Uganda Policy and Practice,” (Report, 2009), at page 7, available at www.google.com assessed on 2/10/2019 around 2:30 pm.

and the community as a whole. The result of these practices goes to extent that, their belongings would be distributed among their family members while they are alive.¹⁰⁵ The above discriminatory practices contravened the provisions of Section 27 of the Land Act 1998 which prohibits the application of any customary law which deny women rights to property.¹⁰⁶ This practice also contravened Article 5 and 7 of the Convention on the Elimination of All Forms of Discrimination against Women thereby entitled to be set aside.¹⁰⁷ It is also in conflict with the agenda of Beijing Declaration of 1995 which was aimed at protecting women's rights in terms of socio-economic status with men.¹⁰⁸ Succession Act of Uganda Cap 162, of 1906 amended in 2011 recognizes only the rights of men to inherit real property, where it apportions only 15% shares out the estate of a deceased person. Under the Act women cannot inherit their father even where there is no male heir the property will go to the male relatives.¹⁰⁹

Conclusions

It is undoubtedly clear that, the laws of Nigeria and Uganda, are aimed at protecting women's rights to property but, the provisions were not being followed because of the impact of the customary law. The provisions were just on papers since implementation become problem. Section 42 of the 1999 constitution as amended in 2011.¹¹⁰ The Section protect Nigerian citizens from all forms of discrimination.¹¹¹ In some cases dealing with distribution of an estate of a deceased person under customary law, it is apparent that, women are discriminated by denying them the right to either inherit their father or husband in Nigeria. Most of the customary law discriminate women's rights to own property even though, the constitution prohibits such discrimination but, the customary law continues to operate.¹¹² On the issue of the right given to the citizen of Nigeria to exercise the right to own property anywhere in Nigeria this right sometime would not be attainable where, after a citizen have purchased property, the government may if it thinks fit confiscate such property, claiming that, it was acquire for public interest. In this respect, what the government would do, is only to pay such person compensation which will not be adequate. This confiscation of a Nigerian citizen's property contravened the provisions of Section 43 of the Constitution.¹¹³

As in the case of Uganda, the 1995 Ugandan Constitution, provide under Article 237 that, the ownership of all lands in Uganda is vested on the citizens of Uganda, the state shall hold for and on behalf of the citizens of Uganda.¹¹⁴ This, implies that, the ownership of all lands in Uganda are owned and control by the citizens of Uganda. This may not be, in case where government acquire land for public interest only payment of compensation is given to the citizens.¹¹⁵ However, Article 244 of the Constitution of Republic of Uganda 1995, provides that, the ownership of lands in Uganda, belongs to the Government of Uganda.¹¹⁶ This is a clear contradiction in the constitution, on the one hand it give ownership of all lands to the citizens and in another hand, it give control or ownership of all lands to the government thereby, creating doubt on mind of the peoples on which category persons (Government or the citizens) has the genuine ownership between the Government and the citizens? The Uganda constitution¹¹⁷ prohibits all forms of discrimination particularly on women rights to property but, the Succession Act¹¹⁸ allocate only 15% shares to a widow of a deceased husband while distributing an estate of her husband, leaving the remaining 75% to the male relatives which is discriminatory to the rights of

¹⁰⁵ Ibid.

¹⁰⁶ Ugandan Land Act 1998, Section 27.

¹⁰⁷ Article 5 and 7 of the Convention on the Elimination on All Forms of Discrimination Against Women 1969

¹⁰⁸ Beijing Declaration goals Of 1995.

¹⁰⁹ Succession Act, Cap 162 Of 1906 amended in 2011, Section 27.

¹¹⁰ S.42(1)(2), 1999 Constitution of the Federal Republic of Nigeria (as amended)

¹¹¹ The Nigerian Constitution 1999, section 42(3) (c-d) (4).

¹¹² The Nigerian Constitution 1999, as amended in 2011.

¹¹³ The Nigerian Constitution 1999, as amended in 2011, section 42.

¹¹⁴ Article 237 of the Republic Constitution of Uganda 1995.

¹¹⁵ Article 26 of the Republic Constitution of Uganda 1995.

¹¹⁶ Article 244 of the Constitution of Republic of Uganda, 1995.

¹¹⁷ The Constitution of Republic of Uganda, 1995.

¹¹⁸ Succession Act 22/27 1994, section 27.

women to property.¹¹⁹ The customary law, is associated with the norms and values that women naturally do not own real property and this, contravened the provisions of Article 33 of the 1995 the Constitution of Republic of Uganda which protect the rights of women to own landed property. However, Nigeria and Uganda, are signatory to the international instruments but, on the context of those countries discriminatory practices are apparent in their customary laws thereby denying women their rights to own property.¹²⁰

Findings

This paper has found that, the laws were not been followed, women are afraid of taking the relatives of their husband to court and Islamic recognized women's rights to property than the customary laws.

Recommendations

Strict punishment should be provided in the laws of Nigeria and Uganda to punish the offenders, Women should be enlightened to know that they have right to take the relatives of their husbands to court for remedy. Uganda shall amend their law discriminating women's rights to property particularly Succession Act of Uganda Cap 206 and Nigeria shall enact new law(s) of women's rights to property and insert affirmative action therein.

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¹¹⁹ Ibid.

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