

**HUMAN RIGHTS, CULTURE, AND THE LAW: STRATEGIES TO INDIGENIZE
RESPONSES TO GENDER DISCRIMINATION AND SEXUAL VIOLENCE AGAINST
WOMEN IN IGBO COMMUNITIES IN NIGERIA**

A Thesis Submitted to the College Of
Graduate and Postdoctoral Studies
In Partial Fulfillment of the Requirements
For the Degree of Master of Laws
In the College of Law
University of Saskatchewan
Saskatoon, Saskatchewan

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ABSTRACT

Gender discrimination and sexual violence have long been aspects of the lived experience of women in eastern Nigeria. Over the past three decades, both the international community and the Nigerian government have taken steps to eliminate discrimination against women. Despite these efforts, Nigeria, like most countries in Africa, still struggles to recognize, let alone implement, the human rights of women to live free from gender discrimination and sexual violence. This experience raises questions about gaps in the implementation of human rights in the context of women's lived realities in Nigeria. In this thesis, I examine the contributions legal statutes, international laws, and regional regulations have made to improving the lives of women in the Igbo communities in eastern Nigeria and find that the law falls short in addressing the practical aspects of implementation. I acknowledge that international and domestic laws constitute a potentially valuable framework for addressing violations of women's rights but believe the application of legal approaches alone is limiting and ineffective. To this end, I argue that meeting the challenges faced in implementing human rights laws that guarantee women's rights to equality and freedom from gender discrimination and sexual violence requires adoption of culturally grounded and contextualized approaches. Women's human rights laws are more apt to gain meaningful acceptance at all levels, from the community to the highest courts, when they are implemented by grass roots institutions that are rooted in the culture. Accordingly, I recommend that traditional leaders, whose legitimacy as custodians of Igbo culture is unquestioned, assume a central role in interpreting and reinterpreting the meaning and significance of cultural values and norms that shape and, in turn, are affirmed by cultural practices. I further suggest that cultural reinterpretation can: (1) discern and incorporate the underlining purpose of most cultural practices; (2) promote and enrich inter-group gender dialogue; and (3) transform and enrich the cultural competency training required by legal professionals and others involved in securing the human rights of women. This multi-faceted approach will gradually transform cultural understanding at the grass-roots level and among professionals and the courts, and in due course lead to international recognition of culture as a valuable resource in the implementation of women's human rights.

ACKNOWLEDGEMENTS

My deepest gratitude goes to God for His grace during my academic program. I am also grateful to the College of Law for the generous financial support provided for the duration of this program. To Professor Lucinda Vandervort, thank you for being my supervisor and a constant supporter. Thank you for agreeing to share your knowledge by taking me on as your student. I am also grateful to the members of my Advisory Committee: Professor Ibronke Odumosu-Ayanu and Professor Sarah Buhler, for giving their time to my work.

To my family, your support, prayers, and love have never wavered, Daalu! To my friend Ayodeji, you have made Canada warmer for me with your friendship, and for this, I thank you

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CHAPTER ONE

Understanding the Setting: Overview, Concepts, Sources and Methods

1.0 Introduction

In 2022, the news of Nnenaya Onu's rape and murder filled the Nigerian media, causing outrage from Nigerians.¹ Nnenaya Onu, an unmarried woman, was stripped naked, beaten, dismembered, and burnt behind her father's house in Ebonyi State for insisting on sharing in her father's inheritance. While her story is heart-breaking, it represents just one of many cases of violence against women reported in Nigeria.

A closer look at the troubling issues of rape, discriminatory inheritance practices, widowhood rites, and adultery sheds light on pervasive gender bias, particularly in Igbo communities.² Women are the victims of most reported cases in these areas, highlighting significant gender discrimination against them.

Gender discrimination and sexual violence against women are global phenomena. Increasingly, sexual violence is recognized worldwide as a human rights issue for women. It includes any harm or suffering perpetrated on the basis of sex that negatively undermines an individual's sexual integrity.³ The World Health Organization describes sexual violence as an epidemic, stating that in some countries, close to "one in four women may experience sexual violence by an intimate partner and up to one-third of adolescent girls and women report their first sexual experience as being forced."⁴ The study reveals high rates of reported sexual and physical violence rates toward women in Africa, the Middle East, and Southeast Asia.⁵

Nigeria is no exception, yet statistics only capture reports from women who were bold enough to speak out or were listened to when they did.⁶ Many others are silent, enduring subjugation, abuse, and denial due to fears of discrimination and retribution. While there is no specific database for the collation of sexual violence data in Nigeria, surveys such as the National Demographic

¹ Linda Ikeji, "She Was Murdered in Cold Blood' NHRC Reacts as Woman is Killed and Burnt for Demanding Her Father's Inheritance in Ebonyi State," *Linda Ikeji's Blog*, March 15, 2022, <https://www.lindaikejisblog.com/2022/3/she-was-murdered-in-cold-blood-nhrc-reacts-as-woman-is-killed-and-burnt-for-demanding-her-fathers-inheritance-in-ebonyi-state.html>.

² Onyinye Hope Chime, Obinna Chukwuebuka Nduagubam, and Chinonyelu Jennie Orji, "Prevalence and Patterns of Gender-based Violence in Enugu," *Pan African Med Journal*, 41, no. 198 (2022): 1, <https://doi.org/10.11604/pamj.2022.41.198.29454>.

³ "What is Sexual Violence," SACHA, June 6, 2019, <https://sacha.ca/files/SACHA-What-is-Sexual-Violence-June-2019.pdf>.

⁴ "Guidelines for Medico-legal Care for Victims of Sexual Violence," World Health Organization, 1 January 2003, <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/05/report/guidelines-for-medico-legal-care-for-victims-of-sexual-violence/924154628X.pdf>.

⁵ World Health Organization, "Guidelines for Medico-legal Care."

⁶ Chime, Nduagubam, and Orji, "Prevalence and Patterns," 2.

Health and Violence against Children surveys and other studies on violence indicate that sexual violence and gender discrimination are widespread.⁷

In Indigenous Igbo communities, there is increasing awareness of the harmful effects of gender discrimination and sexual violence on the development of women. Culture is often identified as a major enabler of patriarchy, contributing to the prevalence of these issues.⁸ This recognition has influenced discussions about the viability of various strategies to eliminate or reduce gender discrimination and sexual violence. Despite Nigeria's enactment of several laws⁹ to protect women from sexual violence and uphold their rights in divorce, adultery, and inheritance, there remain numerous customary laws and practices that contradict these values. For example, Igbo customary law and practice assigns the right to inherit to the eldest son, male child, or male relative. This practice has been condemned at several levels, even in Supreme Court rulings;¹⁰ however it is still followed.¹¹

In Nigeria, the mechanisms for enforcing constitutional provisions and state-made laws are weak at the grassroots level. Disputes tend to be resolved by means of traditional Indigenous practices, in which older and respected members of the community, often but not always male, play key roles. The result is continued reliance on customary law in the resolution of most disputes. In the few cases that proceed to the state courts the influence of custom often hinders members of the judiciary from implementing the provisions of state made law effectively. This is one of the shortcomings of the coexistence of customary law and state-made law.¹²

In much of the discourse about creating equal societies for women and their male counterparts in developing countries, legalism has been identified and promoted as the most effective means for realizing this objective. Consequently, primary attention has been directed towards enhancing the acknowledgement of the formal role the State can play in implementing women's human rights

⁷ "Violence against Children in Nigeria: Findings from a National Survey 2014", National Population Commission of Nigeria, UNICEF Nigeria, and the U.S. Centres for Disease Control and Prevention, February 6, 2016, <https://www.unicef.org/nigeria/media/1586/file/Nigeria-violence-against-children-national-survey.pdf.pdf>.

⁸ Anthonia Essien & Donatus Ukpog, "Patriarchy and Gender Inequality: The Persistence of Religious and Cultural Prejudice in Contemporary Akwa Ibom State, Nigeria," *International Journal of Social Science and Humanity* 2, no. 4 (July 2012): 286, <https://doi.org/10.7763/IJSSH.2012.V2.111>.

⁹ For context purposes, laws as used in this thesis does not include customary law.

¹⁰ See generally *Ukeje v Ukeje* (2014) 11 NWLR pt. 1418, p.384, *Mojekwu v Ejikeme* (2005) 5 NWLR pt. 657, p.403, *Uke v Iro* (2001) 17 WRN 172 and *Mojekwu v Iwuchukwu* (2004) 11 NWLR pt. 883. In these cases, the Supreme Court by a majority held that a custom which strives to deprive a woman of constitutionally guaranteed rights offends the provisions that guarantee equal protection under the law.

¹¹ Mary Izzi & Claribel Fab-Eme, "Widows and Inheritance Rights in Nigeria: Beyond the Letters of the Law," *International Journal of Innovative Legal and Political Studies*, 8, no.1 (July 2020): 6, <https://seahipaj.org/journals-ci/sept-2020/IJILPS/full/IJILPS-S-1-2020.pdf>

¹² Emeka E. Obioha, "Inheritance Rights, Access to Property and Deepening Poverty Situation Among Women in Igboland, Southeast Nigeria," (Paper delivered at the Sub-regional Conference on Gender and Poverty Organized by Centre for gender and Social Policy, Obafemi Awolowo University Ile-Ife, Nigeria May 13, 2003).

and protecting them from sexual violence.¹³ With this approach, States are encouraged to pass laws prohibiting local customs and practices that negate women's rights.

In many respects, the focus on legalism has exaggerated the significance of the influence of state law in the social and political lives of African societies compared to the beneficial role other social institutions¹⁴ serve. Undoubtedly, legal incorporation can serve as a means to protect women's rights by formally enshrining them as state norms, making them nationally binding, and providing a framework for their domestic enforcement.¹⁵ However, despite the presumed sufficiency of laws to address human rights concerns, a substantial gap persists between legal guarantees of equal rights and the actual experiences of women.¹⁶ This disparity is largely attributed to the prominence other rules of social regulation rooted in culture and social norms hold in traditional societies like those in Nigeria, especially in the eastern region, which is the geographic focus of this thesis.

As a result, over the years it has become quite common for Western human rights activists to depict culture as a barrier to the realization of the rights of women in African countries. This portrayal has played a role in the design of the approaches adopted for implementing human rights laws in African countries.¹⁷ However, most state laws protecting women and girls from discrimination and sexual violence do not succeed in providing an environment where women can meaningfully enjoy their rights. This has led numerous scholars to criticize the state-centric nature of most international human rights law and question its ability to protect women's rights, especially at the grassroots level.¹⁸

In light of these considerations, this thesis examines the continued violation of women's equality rights in the eastern part of Nigeria despite the broad protection given to these rights under the Nigerian Constitution¹⁹ and in ratified treaties, as discussed below in Chapter 2. This thesis argues that legal approaches alone have not been effective to improve women's lives in relation to gender discrimination and sexual violence in the eastern part of Nigeria.

¹³ Harriette Chiggai, "Legislation Alone is Not Enough to Achieve Equality," *The Law Society Gazette*, July 15 2019, <https://www.lawgazette.co.uk/commentary-and-opinion/legislation-alone-is-not-enough-to-achieve-equality/5071002.article>.

¹⁴ Social institutions are sets of patterned strategies, consisting of norms, values, and role expectations, which people develop and pass on to subsequent generations for dealing with pressing social needs. See Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (United Kingdom: Polity Press, 1984), 24.

¹⁵ Julie Fraser, *Social Institutions, and International Human Rights Law Implementation: Every Organ of Society* (Cambridge: Cambridge University Press, 2020), 8.

¹⁶ Fraser, "Social Institutions," 8.

¹⁷ Sylvia Tamale, "The Right to Culture and the Culture of Rights: A Critical Perspective on Women's Sexual Rights in Africa," *Feminist Legal Studies* 16, no. 1 (January 2008): 52, <http://dx.doi.org/10.1007/s10691-007-9078-6>.

¹⁸ Fraser, "Social Institutions," 23.

¹⁹ Constitution of the Federal Republic of Nigeria, Act No. 24, May 5, 1999, art. 42.

This thesis draws strength from the liberalized view of adopting culturally inclusive approaches to the negotiation of women's rights recently advocated by most African feminists.²⁰ This perspective posits that integrating socially and culturally respected institutions in the processes used to implement women's human rights can be a more successful means to create more egalitarian society for women than the strict adherence to legal measures.

One such perspective is the "legal transplanting of international norms" and "vernacularization theory" as advanced by Sally Engle Merry, a professor of anthropology renowned for her work on human rights, gender violence and colonialism. She examined the process by which international human rights norms are appropriated and locally adopted. Merry explained that as women's human rights ideas connect with a locality, they take on some ideological and social attributes of the place but also retain some of their original formulations.²¹ Merry identified key facilitators of this process as "communicators" whose ability depends on the institutional positions they hold in their society's social and power hierarchy. She identified factors that determine how vernacularization works, including the characteristics of the channels and technology through which the ideas and practices flow, the nature of the ideas and the idea packages in which they are embedded, and the topography of the terrain in which the transfer of ideas take place.²² Merry argued that transforming customary law and traditional practices in local communities requires that international human rights norms be presented in local cultural terms and framed in terms of local values and images to receive the most acceptance.²³ Merry suggests this may require abandoning explicit references to human rights language altogether or adapting them for different purposes.

By contrast, "legal transplant" is a concept that describes the transfer of a rule or a legal system from one nation to another. The Scottish legal expert W.A.J. Watson first used the phrase "legal transplant" in the 1970.²⁴ Since then, the concept has been espoused by several scholars as an effective tool for legal reforms, especially when existing laws fail to respond to new problems.²⁵ One of the positive effects of legal transplantation is that it allows lawmakers to create the same laws easily in their country to address new problems. However, lawmakers must understand the domestic and foreign context for a law before transplanting, otherwise, it may be ineffective.

²⁰ Tamale, "The Right to Culture," 53.

²¹ Peggy Levitt & Sally Merry, "Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States," *Global Networks* 9, no. 4 (2009): 441, <https://doi.org/10.1111/j.1471-0374.2009.00263.x>.

²² Levitt and Merry, "Vernacularization on the Ground," 452.

²³ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006), 5.

²⁴ Alan Watson, *Legal Transplants: An Approach to Comparative Law*, 2nd ed (Athens: University of Georgia Press, 1993).

²⁵ Cuong Nguyen, "The Drafting of Vietnam's Consumer Protection Law: An Analysis from Legal Transplantation Theories" (PhD diss., University of Victoria, British Columbia, 2011), 27.

Tom Zwart proposes something similar with what he called the “Receptor Approach”.²⁶ Zwart argues that international human rights obligations can be implemented more fully through local social institutions. According to him, the Receptor Approach starts from the premise that, by relying on local socio-arrangements during the implementation stage, human rights protections will be enhanced and reinforced rather than diminished. Reviewing the socio-cultural relationships in Africa, Zwart identifies some social institutions already in place that can best serve as “Receptors” ---kinship structures, educational communities, and self-help.²⁷ For Zwart, a key reason for selecting these Receptors is the legitimacy they already enjoy, making them the best actors to promote human rights consistent with their community values.

When combined, the legal transplant, vernacularization theory, and the receptor approach highlight the importance of reconciling foreign human rights norms with local circumstances. Still, their effectiveness can be compromised in the adopting nations when there is a mismatch between the pre-existing cultural conditions and the transplanted concepts. Merry’s idea of “communicators” and “techniques for communicating” international norms in local communities did not fully consider the cultural systems of leadership in the social locations where a range of useful rights and privileges can advance women’s fight for equality. She lists social media activists, NGO directors and their staff as the “quintessential vernacularizers” the international community has singled out and invested in because they believe they are the right communicators for transplanting international norms. However, this doesn’t align with the reality in many communities in eastern Nigeria where culture and customary laws acknowledge elders, first daughters, and title holders, as leaders and functional connectors. If these recognized community leaders are not included in norm reforms, the process of legal transplantation may still bear the undertones of “cultural abolition.”

Therefore, this thesis argues that substantial programs of legal reform that seek to secure women’s rights should be carried out with the support of the community members whose traditions will be affected and by custodians²⁸ of those traditions who the members of the community respect. This thesis asserts that reforms must be rooted in culture to attain dependable and reliable solutions to inequalities in local communities. The premise is that to be relevant at the ground level, human rights must be seen to be convergent with the underlying values of any group.

²⁶ Tom Zwart, “Using Local Culture to Further the Implementation of International Human Rights: The Receptor Approach,” *Human Rights Quarterly* 34, no. 2 (May 2012): 557, <https://www.jstor.org/stable/23254735>.

²⁷ Zwart, “Using Local Culture,” 554.

²⁸ For context purposes, the group referred to here as custodians of culture/traditional leaders are individuals occupying communal political leadership positions sanctified by cultural mores and values and enjoying the legitimacy of communities to direct their affairs. Their basis of legitimacy is therefore tradition which includes the whole range of inherited culture and way of life; a people’s history; moral and social values and the traditional institutions which survive to serve those values. See further Adewumi JB & J Egwurebe, “Role of Traditional Rulers in Historical Perspective,” in *Local Government and the Traditional Rulers in Nigeria*, Aborisade, Oladimeji, (Ile-Ife: University of Ife Press, 1985), 11-13

This thesis also critically explores how culture and most cultural norms can be misinterpreted for self-serving purposes, leading to counter-productive outcomes in negotiating women's rights, especially in eastern Nigeria. I caution against the idea that most African culture is oppressive and provides little or no room for women's right to equality to thrive. Narrow interpretations tend to exacerbate the problem. Simply denouncing traditional practices as retrograde and incompatible with the modern concepts of human rights glosses over the complex dynamics of the communities where those rules are applied. According to Brenda Oppermann, "in many countries, traditional law is often the only form of law known to many people, particularly those living in the nonurban area."²⁹ This makes customary law the chief guarantor of order in communities where the State's reach is weak.

Initiating changes in gender norms and harmful cultural practices that affect the rights of women requires a grassroots approach, beginning with the community itself. Given that most Igbo communities practice a decentralized system of cultural leadership, a community leader has a sense of autonomy when making laws that directly affect the community.³⁰ As custodians of culture and tradition, they influence whether harmful gender norms and practices persist or change. Due to their role in regulating local culture and advising on traditional rights and local administration, customary leaders are key to achieving acceptance of change by members of the community.

Furthermore, this thesis argues that to ignore the role played by traditional rulers in influencing the negotiation of women's rights at the community level is to underestimate the lasting cultural permanence derived from a collective heritage, identity, and sense of belonging. These aspects are integral to the values held by individuals in grassroots communities. This thesis argues that the circumstances necessary for acknowledging and sustaining the recognition of women's equal rights with men, especially in the local communities, are not found within the confines of State and international laws alone.

Against this background, the thesis focuses on finding solutions that will provide more certainty in defining women's rights in Igbo communities. The thesis proposes a reinterpretation of cultural norms that will allow for a better understanding of the historical evolution of some customs.³¹ This reinterpretation of culture is key to establishing a comprehensive framework where

²⁹ Brenda Oppermann, "The Impact of Legal Pluralism on Women's Status: An Examination of Marriage Laws in Egypt, South Africa, and the United States," *Hastings Women's Law Journal* 17, no. 1 (2006):66, <https://repository.uchastings.edu/hwlj/vol17/iss1/4>.

³⁰ Ignatius Nnaemeka Onwuatuegwu, "The Igbo are Republican and Egalitarian in Nature: A Philosophical Approach," *Sapientia Global Journal of Arts, Humanities and Development* 3, no. 2 (2020): 236, <http://www.sgojahds.com/index.php/SGOJAHDS/article/viewFile/76/79>.

³¹ The reinterpretation doctrine was first developed by Melville Herskovits in the book Melville Herskovits and Frances S. Herskovist, *Trinidad Village* (New York: A.A Knopf, 1947). However, I find that that it can be incredibly helpful in the norm's translation process especially in Igbo societies if it is done by custodians of Igbo culture. This belief is drawn from my opinion that the bulk of women's inequalities stem from the distortions in how culture is practiced and not what culture is itself. The goal is that its application would bring about a more humane understanding of the underlying values behind Igbo customs and this will go a long way in improving the realities of Igbo women.

women's rights that are recognized by most State laws and international laws will better align with Igbo culture. To further buttress this point, this thesis argues that the cultural reinterpretative process will be more effective if the actual custodians of culture have a central role.

This thesis will also explore the impact of inter-gender dialogue and cultural competency training for professionals working with victims of gender discrimination and sexual violence. The suggested approaches can open the door for reconciliation between universal human rights standards and African cultural norms. In turn, this will put human welfare, regardless of gender, at the center of the efforts to promote human rights at the community level.

Overall, it is expected that the approaches suggested in this thesis will encourage human rights activists and legal professionals engaged with women's rights in Igbo communities to pay close attention to the context of cultural practices instead of fixating on cultural norms. This should help to legitimize the positive aspects of equality rights by framing more culturally sensitive laws, promoting understanding of equality rights at the community level, and repudiating the negative effects of inequality and discrimination.

1.1 Overview of the Work

Despite all the advancements in international human rights law, women in Igbo communities continue to face serious human rights abuses and discrimination daily. Issues of disinheritance, denial of land rights, gender discrimination, sexual violence, and other abuses continue to be a reality for women in Igbo communities. There has been, and still is, a growing concern about the situation of Igbo women, especially in communities where the combined effect of multiple factors such as discriminatory cultural practices, limited access to economic resources, and low literacy levels, collectively have a detrimental effect on their ability to enjoy human rights protections. Culture has been identified as one such factor, especially as it relates to discrepancies in the practice of cultural norms across different communities and their alignment with human rights guarantees. As a response to this, there is a widespread belief that for Igbo women to surmount the challenges to the full enjoyment of their human rights, cultural norms and practices must conform to human rights standards.³² This premise has also significantly influenced how human rights laws are interpreted in such communities.

In a positive sense, adopting these approaches in defining women's human rights establishes a basis for universalizing human rights expectations. However, one shortfall of this approach is its neglect of the influence of culture on adherence to the rules and laws of society. This neglect of culture, in the pursuit of a universalized approach to framing and implementing human rights has significantly contributed to the struggles many African States face in implementing human rights. The gap between cultural rights and their practice, and human rights and their implementation, is evident. Several factors contribute to this gap, including limited

³² Chinyere Elsie Ajayi, Khatidja Chantler, and Lorraine Radford, "The Role of Cultural Beliefs, Norms, and Practices in Nigerian Women's Experiences of Sexual Abuse and Violence," *Violence Against Women* 28, no. 2 (2022): 486, <https://doi.org/10.1177/10778012211000134>.

political will, poor economic resources, and the perception of the lack of any connection between international human rights law and cultural norms.³³

In international treaties, human rights are formulated as general and abstract principles to ensure their universal application and to avoid bias towards any tradition. However, this framing may not directly or necessarily resonate with the lived realities and worldviews of many local communities. Consequently, this places most international human rights in a position where they are seen as foreign impositions separate from, or even at odds with, local cultural norms and values. The search for solutions and meaningful ways to make international human rights laws for women amenable to local contexts and cultural situations has promoted debates about adopting a relativist approach. Cultural relativism, as an approach, asserts that culture should be the source of the validity of a law. It suggests that local culture, instead of global or universal norms, is the sole source of the validity of a moral right or rule. In other words, with cultural relativism, the presumption is that rights and other social practices, values, and moral rules are culturally determined.³⁴ While the cultural relativist approach to interpreting international norms underlies many of the ideas expressed in this thesis, it has its limitations. This approach does not fully encompass the processes that shape culture, especially the role played by the institutions that uphold it. Therefore, a more comprehensive perspective is needed, one that delves into the origins of cultural norms, explores how locally agreed-upon norms within Indigenous communities influence the perception of international norms, and examines, in certain cases, the acceptance of these international norms aligns with the culturally embedded values of a community. This thesis advocates the application of a comprehensive approach in which culture mediates between universal abstract norms and reality of social practices, values, and moral rules.³⁵

Questions that are central to this thesis include:

1. Are cultural custodians well positioned to influence the reception of women's human rights at the grassroots? If so, why?
2. Is women's enjoyment of human rights enhanced and strengthened when cultural institutions are utilized as primary facilitators for the implementation of human rights? If so, how and why?

When implementing international human rights law in culturally governed communities, identifying “who matters” and “whose voice is heard” is crucial to success. Choosing recognized custodians of culture to lead the implementation of women's human rights is a logical starting point in the quest for ways to infuse culturally acclaimed standards with international human rights norms.

³³ Fraser, “Social Institutions,” 6.

³⁴ Jack Donnelly, “Cultural Relativism and Universal Human Rights,” *Human Rights Quarterly* 6, no. 4 (1984): 406, <https://doi.org/10.2307/762182>

³⁵ See below, Section 1.3.1 Exploring the Concept of Culture.

A central aim of this thesis is to find effective ways to integrate Igbo culture with international human rights and ensure that women's human rights are meaningful in practice, not just protected in theory. This thesis suggests that the issue of gender discrimination and sexual violence should be viewed as arising at the multi-dimensional intersection of the social, economic, political, and historical realities of Indigenous communities. Such an approach will enable any interventionist strategy to be examined within the current framings of the applicable domestic laws and the acknowledged cultural practice in such communities. It will also consider solutions that are contextual, realistic, more culturally inclined, time-sensitive, and able to provide effective recourse for victims of gender discrimination and sexual violence without invalidating their culturally held beliefs.

Secondly, this thesis affirms the oft-asserted position that women's rights are human rights. As such, it is essential that women in culturally governed communities in Nigeria are educated about their rights and experience supportive encounters with legal and social institutions that facilitate the enjoyment of their rights.³⁶ Mere entrenchment of women's equality with men in state-made laws is not enough to shield them from the realities of gender discrimination and sexual violence. There must be a productive engagement with key facilitators of women's rights beyond the parameters of the letter of the law or it will only ever be a legal fiction in application.

Given the decentralized leadership system of traditional governance in the Igbo communities of Nigeria, this thesis theorizes that impactful change and integration of international norms that affect women's rights can be achieved if custodians of culture are utilized as adaptive mechanisms for these laws. Traditional institutions form the foundation on which new concepts are built, and if appropriately used, this foundation can enable people at the community level to incorporate new ideas while still upholding their culture. Leaning towards this argument, Claude Ake, a Nigerian political scientist who advocated for building on the Indigenous and localized developments to regenerate grassroots communities, opines that:

We cannot significantly advance the development of Africa unless we take African societies as they are, not as they ought to be or even as they might be; sustainable development cannot occur unless we build on the indigenous. What is the indigenous, and how might we build on it? The indigenous is not the traditional, there is no fossilized existence of the African past available for us to fall back on, only new realities, even though hybrid, which can change with each passing day. The indigenous refers to whatever the people consider important to their lives, whatever they regard as an authentic expression of themselves. We build on the indigenous by making it determine the form and content of development strategy, by ensuring that development change accommodates itself to these

³⁶ Sally Engle Merry, "Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence," *Human Rights Quarterly* 25, no. 2 (2003): 381, <http://www.jstor.org/stable/20069668>.

things, be they values, interest aspirations and or social institutions which are important in the life of the people.³⁷

Basing social developments on existing Indigenous systems can affect how they are accepted. This is because the sustainable integration of international norms of equality in Igbo communities in Nigeria largely depends on their alignment with the existing patterns of interaction between culture and the power structures already recognized at the community level.

Reinterpretation is useful when resolving issues related to whether a custom does or does not exist and what a custom is and is not. Below at Chapter 4, this thesis examines the provision of the Evidence Act³⁸ of Nigeria used in proving customary law.³⁹ By using reinterpretation when a custom is contested, rather than relying on the oral testimony of witnesses who may be compromised by self-interest, courts can proceed with more certainty when adjudicating on cultural issues in cases in which women's rights to equality are challenged.

This thesis also proposes using Indigenous inter-gender cultural dialogues at the community level to entrench women's rights in Igbo communities. That approach utilizes the already existing cultural frameworks for dialogue and traditional dispute resolution systems in the Igbo communities: the *ogwa*⁴⁰, *izu ummunna* and *izu ani*.⁴¹ It acknowledges that inter-gender dialogue can provide a forum where members can discuss community problems face to face, identify their root causes and consequences, and develop local solutions.

In the same vein, Bob-Manuel proposes that it is only when potential and actual conflicts in Africa are understood in their social contexts that they can be solved. Values, beliefs, interests, needs, relationships, and networks must be considered. The origins and root causes of the conflicts need to be explored to develop a shared understanding of the past and present.⁴²

Using that same perspective, this thesis also recommends cultural competency training for judges, legal professionals and other stakeholders involved in implementing women's human rights. The approaches suggested in this thesis are closely linked; they highlight the point that fostering a culture that actively supports women's rights to live free from discrimination demands long-term efforts. This goes beyond relying solely on legal frameworks. Societal change requires

³⁷ Claude Ake, "Building on the Indigenous," (Paper delivered at the UN. ECA International Conference on Popular Participation in the Recovery and Development Process in Africa, Arusha, Tanzania, February 12, 1990), <https://hdl.handle.net/10855/13951>.

³⁸ Nigerian Evidence Act, No. 18, 2011.

³⁹ Evidence Act, Section 73.

⁴⁰ In Igbo dialect, *Ogwa* means a meeting hall.

⁴¹ In Igbo dialect, *izu ummunna* means meeting of the kinsmen while *izu ani* means the meeting of the people.

⁴² Ineba Bob-Manuel, "A Cultural Approach to Conflict Transformation: An African Traditional Experience" (Term Paper Written for the Course Culture of Peace and Education, European Peace University, Stadtschlaining, Austria 2000).

a substantial number of people who genuinely believe in and live according to the transformed beliefs.

Although some international laws⁴³ encourage lawmakers to take account of cultural contexts when creating legislation, many international intervention programmes still focus on using purely legal mechanisms in addressing women's rights violations. Unfortunately, these programmes often use individualistic legal approaches to tackle women's sexual violations and gender discrimination cases, resulting in limited effectiveness in local communities.⁴⁴ Without fully incorporating the underlying values behind existing cultural practices and acknowledging the legitimacy of their source, these international intervention strategies fail because they do not engage with local views and expectations regarding human rights norms.

Furthermore, adopting approaches that combine cultural and legal considerations rather than depending solely on legal frameworks alone will be more effective. This integrated approach considers the intricate connectedness of individuals to their community, the distinctive attributes of Igbo customs and practices, and the significance of social belonging in the African context. Gaining an understanding of the conceptual bridges between various forms of gender discrimination existing in Igbo communities and the socio-cultural factors that sustain them should be of strategic importance in providing an understanding of the underlying causes of these issues and an avenue to engage in activism for change at the grassroots through culturally relevant means.

One may ask why this framework is essential and how it can be expected to produce measurable success in reforming the norms and social practices that fuel sexual violence and gender discrimination in Igbo society. For one, it signifies the need to consider the factors that may promote or mitigate the vulnerability of women to sexual violence and gender discrimination outside the efforts of individuals existing in society. Secondly, it can show how specific communal factors that encourage gender discrimination may be beyond the perpetrator's will and the community members that indulge in it. For example, preference for the patrilineal line of inheritance and its continued practice can create challenges when framing the appropriate response to rules that disallow Igbo women from inheriting landed properties. Continuance of the practice inhibits the efficacy of the will of a father who dies testate and wanted to divest his property to his female children.

Sketching the foundation of this thesis would not be complete without a critical review of the various international, regional, and domestic laws adjudged to protect women's rights from gender discrimination and sexual violence. The effects of using the law to protect women's rights concerning female inheritance of land, equality in property settlements upon divorce, and sexual

⁴³ For example, Section 5 of the Convention of the Elimination of all Forms of Discrimination Against Women (CEDAW) allows State parties the power to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary practices based on the idea of the inferiority or the superiority of either of the sexes or on the stereotyped roles for men and women.

⁴⁴ Abidemi Omolara Fasanmi, *Examining Childhood Sexual Violence: An African Womanist Analysis of Childhood Sexual Violence in Nigeria* (PhD diss., Emory University, Georgia, 2019), 42, Emory Theses & Dissertations.

violations in adultery atonement practices are explored in section 3.5. I have selected these key areas to illustrate my argument that international human rights norms will only gain legitimacy in communities in the eastern parts of Nigeria if traditional institutions are recognized as pivotal agents of change. This approach is essential for addressing cultural and socio-legal challenges that are significant for the well-being of women.

1.2 Historical Background of the Federal Republic of Nigeria

1.2.1 Federal Republic of Nigeria

Nigeria was named after the river Niger on the southern coast of West Africa. It shares borders with Benin to the west, Cameroon and Chad to the east, and Niger to the north.⁴⁵ Due to its large land area of about 923,733 square kilometres and the largest population in Africa (presently estimated between 216 million to 230 million people), it is sometimes described as the giant of Africa.⁴⁶

The Nigerian population is comprised of more than 250 ethnic groups, with the three major ethnic groups being the Hausa/Fulani, the Igbo, and the Yoruba, which account for more than half the country's population.⁴⁷ Other sizeable ethnic groups in the country include the Edo, Ibibio/Efik, Ijaw, Tiv, Nupe, Kanuri, Igala, Itshekiri, and Urhobo. Although most Nigerians speak at least one of the three major Indigenous languages-Hausa, Igbo, or Yoruba, about 250 other languages are spoken. However, the official language of Nigeria is English due to colonization.⁴⁸

Before colonization, there was no political entity known as Nigeria. Precolonial Nigeria primarily consisted of various communities and entities of varying sizes, levels of politically centralized kingdoms and empires with varying degrees of social development, degrees of independence, and autonomy. The creation of the Sokoto Caliphate in the Jihad (holy war) of 1804-1808, led by Usman dan Fodio (1754-1817), brought most of the northern region and adjacent parts of Niger and Cameroon under a single Islamic government.⁴⁹ Apart from the Sokoto Caliphate, other culturally based institutions like the Kanem-Borno Empire, Benin Kingdom, and Oyo Empire also existed. All these empires had institutions of political power that “however

⁴⁵ Amah Emmanuel Ibiam, "Federalism, Democracy and Constitutionalism: The Nigerian Experience," *Journal of Law, Policy, and Globalization* 53, no. 1 (2016): 6, <https://iiste.org/journals/index.php/JLPG/article/view/33259/34157>.

⁴⁶ Victor Aderibigbe, "Is Nigeria Still the Giant of Africa," *The Guardian*, September 11, 2017, <https://guardian.ng/opinion/is-nigeria-still-the-giant-of-africa/>.

⁴⁷ Rotimi T Suberu, *Federalism and Ethnic Conflict in Nigeria* (Washington, D.C: United States Institute of Peace Press, 2001), 17.

⁴⁸ Okwudiba Nnoli, *Ethnicity and Development in Nigeria -Research in Ethnic Relations Series* (England: Avebury, 1995), 37.

⁴⁹ Patrick Enaholo, "The Birth of the Nigerian Colony: An Exhibit on the British Creation and Colonization of Nigeria," *Google Arts and Culture*, May 1, 2018, https://artsandculture.google.com/story/birth-of-the-nigerian-colony-pan-atlantic-university/4gUBxi_M6RwA8A?hl=en.

rudimentary they may have been, exhibited the elements of permanence and regularity which are the hallmarks of a political society.”⁵⁰

The British government’s imperial ambitions began gradually in the mid-nineteenth century with trade in material goods. It was preceded by more than three centuries of European trans-Atlantic trade in enslaved Black Africans. Britain abolished slavery through the Abolition of the Slave Trade Act of 1807. This was followed by the renunciation of the slave trade in many parts of Europe. Britain annexed Lagos as a British colony on August 6, 1861, and established trade relations, trade posts, and protection treaties with several communities along Nigeria’s coastal waters.⁵¹

British encroachment continued northward from the coast in imperialist competition for territory, particularly with the French. This process concluded with Britain’s 1900 declaration of its Protectorate of Northern Nigeria and Southern Nigeria. In 1914, the British colonial administrator Lord Lugard amalgamated the Protectorates of Northern and Southern Nigeria with the Colony of Lagos under a single British administration. Thereafter Nigeria was governed as a single unitary state until 1954.⁵²

The creation of Nigeria was not a voluntary act of amalgamation by the regions but was imposed to meet the needs of the British government. The British government adopted the Indirect Rule system to aid in the effective administration of the newly amalgamated regions. The system imposed political control over areas not otherwise subject to state authority by delegating day-to-day governance to local power holders.⁵³

1.2.2 Legal Pluralism and Women’s Right to Equality in Nigeria

Like many African countries with similar colonial experiences, Nigeria inherited most of its codified laws from a colonizer. In this case, the laws arrived in the form of received English laws which were superimposed on or existed concurrently with the Indigenous customary and religious laws of the colonized communities. The result is the situation known as legal pluralism. The term has diverse meanings. However, in the colonial and postcolonial context, the term refers to a situation where customary, Indigenous, and religious laws operate concurrently with State-made

⁵⁰ Ben Nwabueze, *Constitutional Law of the Nigerian Republic*. (London: Butterworths, 1964), 13.

⁵¹ Clement N Oligie, “Colonial Origins of Nigerian Federalism: A Blight on the Nigerian Federation,” *International Journal of Social Sciences* 12, no. 4 (2018):35, https://www.researchgate.net/profile/Clement-Oligie/publication/355351613_Colonial_Origins_of_Nigerian_Federalism_A_Blight_on_the_Nigerian_Federation/inks/616b4ebc039ba2684452086c/Colonial-Origins-of-Nigerian-Federalism-A-Blight-on-the-Nigerian-Federation.pdf

⁵² Jonah Isawa Elaigwu et al, *Foundations of Nigerian federalism*, 2nd ed (Jos, Nigeria: Institute of Governance and Social Research (IGSR), 2001), 37.

⁵³ Anthony Hamilton Millard Kirk-Greene, Review of *Indirect Rule and the Search for Justice: Essays in East African Legal History*, by H.F Morris and James S. Read, *Bulletin School of Oriental African Studies*, 36, no. 3 (October 1973): 725, <https://doi.org/10.1017/S0041977X00120592>.

law and are sometimes officially recognized and incorporated into State law.⁵⁴ This definition captures the landscape in Nigeria.

After independence, the Nigerian constitution established a pluralistic system of governance to accommodate the various religious and ethnic groups and preserve the traditions of its diverse communities.⁵⁵ Through this system, Nigeria has recognized three primary sources of the majority of its laws:

- (a) English Law: This includes the common law, doctrines of equity, statutes of general application, which were in force in England on January 1, 1900, and statutes and subsidiary legislation on specific matters;⁵⁶
- (b) Nigerian Legislation: Besides the received English law, this is one of the most important sources of Nigerian Law. It includes federal statutes, State legislation, and subsidiary legislations, including Ordinances, Acts, Rules, Orders, Laws, and Decrees;⁵⁷
- (c) Customary Law: Customary law is defined as law emerging from the traditional usage and practice of a people in each community by common adoption on their part. This practice has, to some extent, an element of compulsion and force of law for members of the community.⁵⁸

Legal pluralism, as demonstrated by the case of Igbo customary law on gender inheritance and in Supreme Court rulings, creates room for inconsistent experiences of the law. The challenge lies not in legal pluralism itself but in its potential to create unequal treatment within a system that lacks transparency. Unlike other countries, such as South Africa, where legal pluralism accommodates multicultural legal traditions without necessarily resulting in unequal treatment, it can underscore issues in a system marked by inconsistent definitions and interpretations of the law, particularly in dispute resolution. In these cases, legal pluralism may fail to protect the beneficiaries of one or more aspects of the applicable “laws.”

It is undoubtedly true that the intricacies of legal pluralism can complicate the implementation of women’s rights. That raises the question of whether these complexities can be addressed through the reinterpretation doctrine proposed in this thesis. Nonetheless, this thesis argues that the re-interpretation doctrine may prove to be a more effective way to align the rights of women protected by State-made laws with local realities.

⁵⁴ Marshall Barry Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-colonial Laws* (Oxford: Clarendon Press, 1975), 17.

⁵⁵ Philip Ostien & Abdul-Fatah ’Kola Makinde, “Legal Pluralism in Colonial Lagos: The 1894 Petition of the Lagos Muslims to their British Colonial Masters,” *Die Welt des Islams* 52, no. 1 (2012): 56, <https://ssrn.com/abstract=2494289>.

⁵⁶ Marshall, *Legal Pluralism*, 54.

⁵⁷ Akintunde Olusegun Obilade, *The Nigerian Legal System* (London: Sweet & Maxwell, 1979), 60.

⁵⁸ See generally, *Nwaigwe v. Okere* (2008) NSCQR 35 at 570 per Niki Tobi J.S.C

1.3 Conceptual Clarifications

This thesis proceeds from the premise that the foundation of all knowledge systems is local. This section clarifies the main concepts used throughout the thesis before proceeding to apply them.

1.3.1 Exploring the Concept of Culture

The terms “culture,” “customary law,” and “custom,” are often used interchangeably, especially in discussions of African law, to highlight how Indigenous African societies are organized. Customary law refers to the rules and principles that govern the application, administration, and enforcement of the rights, obligations, and responsibilities embedded in the customs that govern a community, while customs themselves are the reference points where the community’s good habits are stored as indicators of propriety in society.⁵⁹

The “African philosophy of culture” is concerned with the sum of people’s ways of living, histories, conventions, and practices passed on from generation to generation and endowed with a distinctive character.⁶⁰ Culture permeates all our lives; we experience and do culture every moment. Culture conditions our behaviours, and in turn, our behaviour modifies culture.⁶¹

Various social institutions have constructed the potent symbols of culture, their processes, and their consequences at different points. For example, breaking the kola nut before communal meetings in Igbo society symbolizes the intention of peace and harmony among the meeting participants. This illustrates that a close study of a particular culture might be best facilitated by a study of the social institutions that frame it.

Many presumptions about African culture, primarily from non-African perspectives were adopted without critical examination. Some feminist African writers contend that contemporary notions of African culture are largely products of construction and reinterpretations by former colonial authorities in collaboration with African patriarchs.⁶² Tamale’s position, in this regard, finds western exploitation of meaning significantly present in what has come to be defined as African sexuality. According to her, West narratives often equated African sexuality with primitiveness, portraying it as immoral, and bestial. Colonialists embraced these attributes as reflections of African culture and morality, using these constructed colonial narratives to “justify” the fundamental objectives of colonialism.⁶³

Nzegwu shares a similar perspective regarding misinterpretations of African culture. She asserts that viewpoints developed without factual studies only aim to promote the Western ideals

⁵⁹ Tom Bennett, “Re-introducing African Customary Law to the South African Legal System,” *The American Journal of Comparative Law* 57, no. 1 (2009): 1, <https://doi.org/10.5131/ajcl.2008.0001>.

⁶⁰ Nkiru Uwechia Nzegwu, *Family Matters: Feminist Concepts in African Philosophy of Culture* (Albany, N.Y: State University of New York Press, 2012), 28.

⁶¹ Richard Fellows & Anita MM Liu, “Use and Misuse of the Concept of Culture,” *Construction Management and Economics* 31, no. 5 (2013): 412, <https://doi.org/10.1080/01446193.2013.794296>.

⁶² Tamale, “The Right to Culture,” 53.

⁶³ Tamale, “The Right to Culture,” 61.

of feminism. Focusing particularly on the Igbo society, she states that the current interpretation of African culture grows out of European colonial policies and are recent inventions, not accurate interpretations of actual traditions.⁶⁴ In her examination of the different forms of family relationships found in Africa, Nzegwu explains that before colonialism, women played important roles in African cultural traditions where power between men and women was more evenly balanced. She opines that safeguarding the claims of older cultures, as opposed to the more recently constructed ones, would enhance women's status.⁶⁵

Constructions of culture go a long way in determining how customary practices will be perceived. Adopting a negative disposition towards the practices of a culturally bounded community can be counterproductive, especially as it affects women's rights. This is usually because the meaning ascribed to the term "culture" can effect how the practices attributed to it are received. If African cultural practices are portrayed as backward, static, and oppressive, it implies that African women must strip themselves of culture before enjoying their human rights. This approach would fail to harness the potential of culture to effect the social transformation that can better promote women's human rights.

This thesis asserts that culture is not entirely neutral; it is historical, specific, and ideological. It is actively created by society or groups within the community from which it emanates. Culture is always in the process of being reshaped, and it emerges from dynamic economic relationships.⁶⁶

In line with this approach to defining culture, Williams conceptualizes it as the existence of a dominant and effective system of practices, meanings, and values. The dominant culture is neither static nor absolute. It is transmitted through a medium of education. It is a combination of values, meanings, and practices selected from various possibilities. Those that are not selected are ignored or reinterpreted to support or at least harmonize with the dominant culture.⁶⁷ Along with this process of selection and interpretation, there is a continual process of modification.

This definition and characterization of culture is essential to this thesis because of the flexibility of meaning it offers to culture. The substance of culture is shaped by exclusion, interpretation, and adaptation. When applied in relation to women's equal rights with men, gender equality, this interpretation brings us closer to understanding that the existence of culture is tied to the unity and agreement of people with their communities. Therefore, culture cannot use humans to shape itself and transform the community. It is humans who use culture as a means of social identity and ultimately change their communities.

⁶⁴ Nzegwu, *Family Matters*, 29.

⁶⁵ Cynthia Willett, "Review of *Family Matters: Feminist Concepts in African Philosophy of Culture* by Nkiru Uwechia Nzegwu," *Hyatia* 23, no. 3 (2008): 226, <http://dx.doi.org/10.1353/hyp.0.0033>

⁶⁶ Raymond Williams, *Problems in Materialism and Culture: Selected Essays* (London: Verso, 1980), 72.

⁶⁷ Williams, *Problems in Materialism*, 72-73.

This approach to defining what culture means is consistent with the proposition that cultural reconstruction is possible if correct approaches are adopted. Cultural practices that serve the self-interest of men and negate women's human rights can be transformed without the identity of the people and their community being lost.

1.3.2 The Igbos on the Map

The Igbos are one of the three largest ethnic groups among hundreds of ethnic groups in Nigeria. At present, in the 36-state structure of Nigeria, the Igbo live predominantly in Abia, Anambra, Ebonyi, Enugu, and Imo states.⁶⁸

Politically, the Igbo society is divided into local governments, sub-regions, zones, and states.⁶⁹ In the precolonial era, the Igbo lived in autonomous villages and towns, and their recognized traditional rulers governed their cultural groups. With a few exceptions, they continue to organize themselves in patrilineages. Relationships are based on blood ties; from a sociological point of view, the family is seen as the unit or group within which individuals must be situated and identified.⁷⁰ An Igbo person first belongs to a family consisting of a man, his wife or wives, and their children. Individuals can also be identified through his/her lineage group called the "Umunna" and finally, "obodo," a group of lineages that come together to form a compact village.⁷¹

As in pre-colonial times, custodians of the Igbo cultural heritage are selected through informal means. Male leaders derive authority from their position as an aged family member believed to possess a lot of wisdom. Men achieve leadership status as they advance in age because age is explicitly associated with accumulated wisdom. This attribution of wisdom to the aged is based on their accumulation of experience in interpreting traditions and customs of the land overtime.⁷²

Pre-colonial Igbo society espoused democracy and direct participation in government but had no centralized government. This approach to political organization was a striking feature of their community. There is a lack of a centralized political structure even until today.⁷³ At the peak of the Igbo political hierarchy is a crowned ruler known as "Eze" followed by the Council of Elders

⁶⁸ Akamu G Adebayo et al., *Indigenous Conflict Management Strategies in West Africa: Beyond Right and Wrong*, (Lanham: Boulder: Lexington Books, 2015), 168.

⁶⁹ Ruth Stellamaris Opara, "African Women as Victims or Heroines? Obiwuruotu Women's Music, Gender, Marriage, and Culture Among the Igbo in Nigeria" (PhD diss., University of Colorado, Boulder, 2017), 24, ProQuest Dissertations & Theses Global.

⁷⁰ Adebayo, *Indigenous Conflict Management*, 32.

⁷¹ Don C. Ohadike, "Igbo Culture and History," in *Things Fall Apart*, ed. Chinua Achebe, Simon Gikandi & Don C Ohadike (London: Heinemann, 1996), 16.

⁷² Ngozi Ezenagu, "Leadership Styles in the Management of Igbo Cultural Heritage in Pre-European Era," *OGIRISI: a New Journal of African Studies* 13, no. 1 (September 2017): 29, <https://doi.org/10.4314/og.v13i1.2>.

⁷³ Ezenagu, "Leadership Styles," 32.

consisting of members of each clan or family heads who are usually “*Ozo titleholders*”.⁷⁴ These men are respected for their knowledge and experience in traditional matters. The spiritual intermediaries of the community are second in the political hierarchy. They act as the custodians of morality for their shared community values and work directly with the council of elders. There is also the *Ummunna*, that oversees issues arising from the families and villagers respectively, while the *Umuada* presides over domestic or family matters.⁷⁵

The social and political structures of Indigenous Igbo society revolve around crosscutting ties, typically comprised of elders, age groups, councils of chiefs, women’s associations, and secret societies. These are regulatory institutions that make decisions concerning the community members by consensus.

1.3.3 The Igbo Woman in Context

In this thesis, “*woman*” is defined by differences in the biological makeup of women and men. In Indigenous Igbo societies, “*women*” are further classified as belonging to one of the diverse age and social groups-*umuada* (young girls), *mgboto* (ladies), *ndom* (married women), and *oke mgboto* (unmarried women).⁷⁶ Historically, the organizational structures of these groups allowed them to play important social, political, economic, and spiritual roles in the community. Their base of political power lay in their gatherings. Through these gatherings, the women discussed settling disputes, such as how to improve the village, its market, or any other problems of general concern.⁷⁷

Using a contextual definition of “*woman*” in discussions of gender equality for Igbo women is essential to counter the prevailing Western characterization of “*African Women*” as victims. Although that definition may have been employed for strategic reasons, it has promoted an implicit bias against African women. Some feminist scholars have advised against adopting universal themes and concepts in trying to define the essence of a woman.⁷⁸ Definitions that ignore complexities arising from different political, socio-economic, and cultural settings, especially as they relate to African women, not only preclude capturing the realities of most women but also limit the scope of possible solutions to improve their lives.⁷⁹

⁷⁴ Ozo title is an Indigenous sacred institution of the Igbo’s that is believed to uphold and sustain the Igbo religious system.

⁷⁵ Ezenagu, “Leadership Styles,” 32.

⁷⁶ Opara, “African Women as Victims,” 28. Although in the context of Opara’s work, these categories are typical in Imo State, a key state in the Igbo community, they also cut across and are obtainable in the same vein in other Igbo communities.

⁷⁷ Judith van Allen, “Sitting on a Man: Colonialism and the Lost Political Institutions of Igbo Women,” *Canadian Journal of African Studies* 6, no. 2 (1972): 169, <https://doi.org/10.2307/484197>.

⁷⁸ Natalie Stoljar, “Essence, Identity, and the Concept of Woman,” *Philosophical Topics* 23, no. 2 (1995): 275, <https://doi.org/10.5840/philtopics19952328>.

⁷⁹ Sharon Smith, “Black Feminism and Intersectionality,” *International Socialist Review*, January 1, 2017, <https://isreview.org/issue/91/black-feminism-and-intersectionality/index.html>.

Legal rules and principles relating to women's lives are often framed in terms of universal themes and concepts. There is a belief that there are many commonalities between the status of women in the global south and the global north, and that shared legal standards can be a way to bridge the gap. However, applying a monolithic approach towards framing laws affecting women's lives creates problems of adoption and implementation. For this reason, some African feminist writers argue that unless more women's experiences, perspectives, and voices are incorporated into law to empower and legitimize women's experiences, male-dominated law will continue to reflect and shape prevailing social and individual understanding of women's rights. This can lead to the silencing and discrediting of women.⁸⁰

In African societies, feminism has been criticized as a western discourse because it still carries the baggage of colonialism. It is often interpreted as anti-male, anti-culture, and anti-religion in its theoretical framework.⁸¹ However, with modification of the term to reflect the cultural experiences of African women, feminism has proved to be a helpful tool in analyzing the legal principles concerning how women's rights are expressed and protected.⁸² For this reason, this chapter also discusses theoretical perspectives from feminist, Third World Approaches to International Law (TWAAIL), and human rights scholarship to highlight the complexities of situating African women's realities in international legal frameworks.

1.3.4 Feminist Approaches to African Women's Rights

The differences in the reception of women's rights in diverse communities worldwide lay bare the structural inequalities that shape women's lives. It has shown that culture, norms, and social practices in the different communities reproduce the inequalities that affect women's lives.

Feminism has offered a different perspective on the impact of structural inequalities on women's rights and raises questions about the extent to which these rights can be influenced by such inequalities. It has presented an avenue for women all over the world, even in African societies, to stand in solidarity with one another, questioning power structures, and speaking out against the root causes of inequalities as well as forging feasible solutions and recommending critical actions for building a future that includes every woman regardless of race and class. Despite the circulating notion in Africa of the pervasive influence of Western ideals in determining what amounts to feminism and the many misconceptions about it, there is still a growing body of creative, scholarly, and political work by African women⁸³ that can be placed under the rubric of

⁸⁰ Tamale, "The Right to Culture," 56.

⁸¹ Mary Modupe Kolawole, "Transcending Incongruities: Rethinking Feminisms and the Dynamics of Identity in Africa" *Agenda* 54, no. 1 (2002): 93, <https://doi.org/10.1080/10130950.2002.9676183>.

⁸² See generally womanism, nego-feminism, African feminism.

⁸³ For readings on the feminist scholarships written by black women see Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (Boston: Unwin Hyman, 1990), Obioma Nnaemeka, "Mapping African Feminisms, adapted version of 'Introduction: Reading the Rainbow' from Sisterhood, Feminisms & Power: From Africa to the Diaspora" in Andrea Cornwall (ed), *Readings in Gender in Africa* (Indianapolis: Indiana University Press, 2005), Filomina Chioma Steady, "African Feminism: A Worldwide

African feminism.⁸⁴ Much of the scholarship that comes under this rubric is not only important to this thesis but, on a broader scale, has contributed epistemologically to re-imagining what is meant by “feminism” in a global context, as well as in the African context.

1.3.4.1 African Feminism

African feminism represents one of the ways African women struggle for identity. African feminist epistemology and rhetoric provide arguments that validate women’s experience in Africa and women of African origin against mainstream Western feminist discourse. It proposes to create a discernable difference between colonized women and those considered as colonizers and a social movement that aims to raise a global consciousness that sympathizes with African women’s histories, present realities, and future expectations.⁸⁵

African feminism was created in response to the failure of Western feminism to comprehend the unique concerns of African women that gave rise to differences in the meaning of feminism for African women and Western women. Race, class, and gender are significant issues affecting black women, which Western feminism often failed to address. Accordingly, African women have tried to redefine and re-express the importance of their particular issues.⁸⁶ According to Steady:

African feminism combines racial, sexual, class, and cultural dimensions of oppression to produce a more inclusive brand of feminism through which women are viewed first and foremost as human rather than sexual beings. It can be defined as an ideology that encompasses freedom from oppression based on the political, economic, social, and cultural manifestations of racial, cultural, sexual and class biases. It is more inclusive than other forms of feminist ideologies and is largely a product of polarizations and conflicts that represent some of the worst and most chronic forms of human suffering---African feminism is, in short, humanistic feminism.⁸⁷

As a result of African feminism, Igbo women have a better understanding of the climate of inequality in which they live, whether resulting from Western pressures or internal shifts within their cultural communities. This has granted them unique opportunities to alter their sociocultural positions in their communities. Additionally, it has underscored the need for a critical examination of cultural norms that have long perpetuated gender inequality between men and women.

Perspective” in *Women in Africa and the Diaspora*, ed. Rosalyn Terborg-Penn, Sharon Harley and Andre Benton Rushings (Washington D.C. Howard University Press, 1987).

⁸⁴ Beverly Guy-Sheftall, “African Feminist Discourse: A Review Essay,” *Agenda* 58, no. 1 (2003): 36, <https://doi.org/10.1080/10130950.2003.9674490>.

⁸⁵ Ruvimbo Goredema, "African feminism: The African Woman's Struggle for Identity," *African Yearbook of Rhetoric* 1, no. 1 (2010): 34, <https://hdl.handle.net/10520/EJC169591>

⁸⁶ Goredema, “African Feminism,” 36.

⁸⁷ Filomina Chioma Steady, “African Feminism: A Worldwide Perspective” in *Women in Africa and the African Diaspora: A Reader*, 2nd ed. Rosalyn Terborg-Penn and Andrea Benton Rushing, (Washington, DC: Howard University Press, 1997).

1.3.4.2 Third World Approaches to International Law (TWAIL)

Researchers like Larissa Ramina have described TWAIL as a political and intellectual movement that emerged in a revolt against the universalization of international law.⁸⁸ It was built on the idea that neither the universality principle concerning international law nor its promise of establishing a global order can make international law just or gain it recognition as a legitimate code of governance, especially in the third world.⁸⁹ TWAIL perspectives demand that implementation strategies of international law must begin with an “attempt to understand the history, structure and process of international law from the perspective of third world states.”⁹⁰

TWAIL scholars utilize the contested nature of international human rights law, especially in most African societies, to discuss the contextualities involved in adopting a universal view of international law. Three interrelated and purposive objectives drive these discussions:

The first is to understand, deconstruct, and unpack the uses of international law to create and perpetuate a racialized hierarchy of international norms and institutions that subordinate non-Europeans. Second, seeks to construct and present an alternative normative legal edifice for global governance. Finally, TWAIL seeks, through scholarship, policy, and politics, to eradicate the conditions of underdevelopment in the third world.⁹¹

In analyzing difficulties in implementing international human rights laws, the TWAIL perspective helps highlight the cause of the current gap between women’s lived realities and normative aspirations despite the legal protective frameworks. This is consistent with and supports my earlier assertion that human rights issues are not to be approached solely from a formal legal textual and institutional angle and, in this sense, with laws alone.⁹²

1.4 Sources and Methods

The research for the thesis is based on published legal materials available in print or reported and posted online, and secondary literature in law, the social sciences, and humanities. Disputes that are resolved at the community level in Nigeria, as well as deliberations, consultations, and discussions in Igbo communities that generate policy and regulatory guidance at the local level whether through consensus or otherwise, are not reported and are seldom

⁸⁸ Larissa Ramina, “Framing the Concept of TWAIL: Third World Approaches to International Law,” *Revista Justica do Direito*, 32, no. 1 (2018): 6, <https://doi.org/10.5335/rjd.v32i1.8087>.

⁸⁹ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005), 42.

⁹⁰ Bhupinder Chimni, “The Past, Present and Future of International Law: A Critical Third World Approach,” *Melbourne Journal of International Law* 8, no. 2 (2007): 499, https://law.unimelb.edu.au/__data/assets/pdf_file/0010/1683145/Chimni.pdf

⁹¹ Makau Mutua & Antony Anghie, “What is TWAIL?” *Proceedings of the ASIL Annual Meeting* 94, no. 1 (2000): 31, <https://doi.org/10.1017/S0272503700054896>.

⁹² Opeoluwa Adetoro Badaru, “Examining the Utility of Third World Approaches to International Law for International Human Rights Law” *International Community Law Review* 10, no.1 (2008): 382, <https://doi.org/10.1163/187197308X356903>.

described or discussed in published materials. Similarly, decisions rendered by the lower courts in Nigeria are not reported and published and as a result are ordinarily not available online. My research for the thesis did not include formal empirical “field research” in the lower courts and Igbo communities in Nigeria. Field research would have definitely augmented and enriched my sources, but it was not feasible to undertake such work as the basis for my master’s thesis. The sources available to me necessarily determined the nature and scope of the thesis project I was in a position to undertake. As completed and presented here, the thesis provides critical analyses of the issues and a theoretical framework for further research, including research in the Igbo communities of eastern Nigeria.

Accordingly, my primary legal sources include international and regional treaties and covenants, Nigerian legislation, and judicial decisions. These materials are analyzed to identify what women’s rights are in the international and domestic contexts and how those rights have been interpreted and enforced in Nigerian by legal professionals, judges, and legislators over the years. Secondary sources, such as books and articles in scholarly journals from multiple disciplines, serve as sources of insight and perspective on the shifting discourses and theories about human rights and women's rights in Africa and Igbo society.

The primary method used in the thesis is critical analysis of law and socio-legal theories informed by the perspectives I bring to the project from the whole of my lived experience. As a person of Igbo heritage who has lived from birth in Igbo communities, I draw on my working knowledge of Igbo culture and society. I also draw on my knowledge of Nigerian law and legal practice based on my legal education and professional experience working in the Nigerian legal system.

1.5 Chapter Characterization

This thesis has five chapters. Chapter One sets out the conceptual framework of the thesis and provides an understanding of the factual background, including the historical background and overview of the Nigerian legal system and a brief introduction to the cultural system of Igbo society. It highlights the problems explored in this thesis, that is, gender discrimination and sexual violence in Igbo communities of Nigeria. It also outlines the significant premises and arguments presented in the thesis. Chapter Two examines the legal framework for human rights implementation under domestic and international law. It discusses the obligation of the Nigerian government to implement these laws and how their efforts, thus far, have been limited in applying them to improve women’s lives.

To explore the viability of adopting the approaches suggested in this thesis, Chapter Three focuses on three socio-legal problem areas to illustrate the struggle for women’s equality rights in Igbo communities in Nigeria in relation to sexual violence, financial and economic exploitation,

and gender discrimination in inheritance and family law matters. Chapter Four is the working core of this thesis, where the ideas explored in the previous chapters are developed. The reinterpretation of cultural practices by traditional leaders, inter-gender dialogue at the community level, and cultural competency education training for judges, legal professionals, and other administrative professionals involved in implementing women's human rights are particularly important. Chapter Five also summarizes the results of the thesis, recommends changes in the law and societal beliefs about women's rights, and proposes avenues for further research.

CHAPTER TWO

SURVEY OF THE INTERNATIONAL, REGIONAL, AND NATIONAL HUMAN RIGHTS LAWS PROHIBITING GENDER DISCRIMINATION AND SEXUAL VIOLENCE IN NIGERIA

2.0 Introduction

A significant question raised in this thesis is whether legal reforms are appropriate for actualizing women's rights in Igbo societies. Therefore, this chapter examines the various legal frameworks that are available to implement the human rights recognized in international and regional law for women. It examines the obligation of the Nigerian government to implement international human rights treaties, particularly those that may be invoked to achieve equal rights for women in Igbo society. The suitability and effectiveness of the current legal approaches towards eliminating gender discrimination and sexual violence are critically assessed.

2.1 Protection of Women's Human Rights Under International Law

Women around the world regularly suffer violations of their human rights, and the realization that women's human rights have not always been a priority when compared to their male counterparts has prompted the international community to create legal frameworks for the protection of women's recognized rights that are binding on States. The efficacy of these laws in protecting the rights of women in Igbo communities in Nigeria is discussed.

2.1.1 The Universal Declaration of Human Rights

The United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) on December 10, 1948.⁹³ The UDHR set the foundation for developing an international human rights law corpus. The Declaration was created to promote actively all human rights, the rule of law, and democracy.⁹⁴ With respect to gender equality, the drafters of the UDHR recognize that women's rights are human rights, which means that they are interlinked, mutually reinforcing, and belong to the universal and indivisible core values of the United Nations.

Article 1 of the UDHR provides that:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood⁹⁵

In the same vein, Article 2 of the Declaration provides that:

⁹³ *Universal Declaration of Human Rights (UDHR)*, GA Res 217A (111), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (adopted December 10, 1948).

⁹⁴ "Human Rights and Gender," United Nations, accessed December 27, 2023, <https://www.un.org/ruleoflaw/thematic-areas/human-rights-and-gender/>.

⁹⁵ UDHR, art. 1.

Everyone is entitled to all rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Furthermore, no distinction shall be made based on the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing, or under any other limitation of sovereignty.⁹⁶

In the UDHR, discrimination based on sex is expressly prohibited. This is why it also provides that:

All are equal before the law and are entitled, without any discrimination, to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.⁹⁷

The provisions of the UDHR provide the foundation for most of the contemporary discourse on women's rights. This has helped anchor most of the discussions around feminism and gender equality by most writers.⁹⁸ The UDHR provided the backdrop for women's rights treaties.

The words in the UDHR may have been stirring, but its potential weaknesses as a means to secure the guarantees it professed to provide were quite glaring. For one, there was the task of interpreting and defining the vaguely worded rights and marking off trade-offs between those rights and the already existing norms of right and wrong in the ratifying states. The rights outlined in the articles of the UDHR were framed in vague and idealistic terms, which were open to various interpretations. This meant that the Declaration could be influenced by the traditions of legal thought that are particular to individual states.⁹⁹ It is crucial to note is that in 1945, as the document was being drafted, women's rights were being violated. Bolder steps could have been taken in the Declaration to protect women's rights, given that women were considered more vulnerable than men. Instead, it offered general provisions that failed to adequately address the unique challenges generally experienced by women.

2.1.2 Convention on The Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)¹⁰⁰ was adopted by the UN General Assembly in 1979. It can be described as the international bill of

⁹⁶ UDHR, art. 2.

⁹⁷ UDHR, art. 7.

⁹⁸ Johannes Morsink, "Women's Rights in the Universal Declaration," *Human Rights Quarterly* 13, no. 2 (1991):256, <https://doi.org/10.2307/762661>.

⁹⁹ Eric Posner, "The Case Against Human Rights," *The Guardian* December 4, 2014, <https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights>.

¹⁰⁰ *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW), G.A Res. 34/180, U.N. GAOR, 34th Sess., Supp. No 46, U.N. Doc. A/RES/34/180 (adopted September 3, 1981).

rights for women. The Convention is important in bringing women into the focus of human rights concerns.

Its thirty articles and preamble provide the basis for realizing equality between women and men. Amidst the many attempts of the UDHR to provide for equality between men and women, the preamble of the Convention acknowledges that “extensive discrimination against women continues to exist and emphasizes that such discrimination violates the principle of equality of rights and respect for human dignity.”¹⁰¹ In line with this, the Convention defines discrimination against women as:

...any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status based on equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁰²

Through the CEDAW, the legal status of women receives the broadest attention. Article 2 of the Convention identifies most of the commonly recognized rights of women and provides that:

State parties must condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women.¹⁰³

To realize the goals of Article 2, Article 5(a) calls for a social and cultural transformation on the part of state parties to remove barriers to achieving the full rights of women. Explicitly, it provides that:

State parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women to achieve the elimination of prejudices and customary and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.¹⁰⁴

A combined reading of the above suggests that the framers of the CEDAW saw culture and some social practices as problems to be overcome in order to realize women’s human rights fully. Although this presumption is not related to every culture or cultural practice, the provision refers to those grounded on stereotyped constructions and understandings of masculinity or femininity,

¹⁰¹ CEDAW, Preamble.

¹⁰² CEDAW, art. 1.

¹⁰³ CEDAW, art. 2.

¹⁰⁴ CEDAW, art. 5(a).

as well as the resulting imbalanced gender relations that restrict women's enjoyment of their potential and capabilities.¹⁰⁵

The intention of Article 5(a), that is, the requirement imposed on state parties to "modify social and cultural patterns of conduct of men and women" might seem unambiguous on paper, still, it interfaces with many complexities; equality in a strictly legal sense collides with the customary deep-seated difference and inequality between men and women. However, this reality amidst the ratification and adoption of the CEDAW does not remove the fact that the CEDAW is one single international document that seeks to protect women's rights.

Undoubtedly, the rights of women guaranteed in the UDHR were given more meaning with the CEDAW, particularly due to its robust provisions that are tailored to the specific circumstances of women. However, like the UDHR, the CEDAW includes vague provisions that fail to address crucial violations of women's rights in many parts of the world. It also, by interpretation, allows for frail implementation mechanisms of its provisions. The obligation of compliance placed on ratifying States leaves much to be imagined. For example, the preamble does not ask States to take "all necessary measures" to eliminate gender inequalities but only "required and appropriate measures". While the provisions of the CEDAW do not suggest that State parties can be passive by merely requiring them only to take "all appropriate measures," it does not specify what these appropriate measures might mean.¹⁰⁶ This leeway for discretion has been exploited by some States, especially in Africa. Some States have postponed any modification to their existing laws on the ground that such modification was not "appropriate" at the time.¹⁰⁷

Regardless of the general protection of women's human rights in the CEDAW, the sum of its provisions still failed to reflect women's experiences, especially in the Global South. Conceding to this, Yahyaoui explains that:

The CEDAW is hardly suited to address specific experiences, needs, and situations of women living in circumstances different from the standard Western lifestyle. If it does, it does it in a very simplistic way without giving any guidance to governments dealing with this complex issue.¹⁰⁸

The ratification of the CEDAW subject to reservations also falls short of the implementation measures envisaged by most of its articles.¹⁰⁹ The CEDAW permits ratification subject to

¹⁰⁵ Ramona Biholar, "Transforming Discriminatory Sex Roles and Gender Stereotyping: The Implementation of Article 5(a) CEDAW for the Realization of Women's Right to be Free from Gender-based Violence in Jamaica," vol. 62, School of Human Rights Research series (Cambridge; Antwerp: Intersentia, 2013), 29.

¹⁰⁶ Samar El-Masri, "Challenges Facing CEDAW in the Middle East and North Africa," *International Journal of Human Rights* 16, no. 7 (2012): 937, <https://doi.org/10.1080/13642987.2011.629096>.

¹⁰⁷ El-Masri, "Challenges Facing CEDAW," 939.

¹⁰⁸ Ekaterina Yahyaoui Krivenko, "Women, Islam and international law: Within the Context of the Convention on the Elimination of All Forms of Discrimination against Women", (Graduate Institute of International and Development Studies Vol. 8; Leiden; Boston: Martinus Nijhoff Publishers, 2009),16.

¹⁰⁹ CEDAW, art. 28.

reservations if the reservations do not contradict the treaty's object or purpose. Yet, it fails to contain any objective criteria to determine if State's reservations have met the "no contradiction requirement."¹¹⁰ With this provision, some States have drawn their reservations so widely that they affect almost all the provisions of the CEDAW. Reservations adopted by some reserving States allow for the ratification of CEDAW only to the extent that the Treaty provisions correlate with the domestic laws of the State.¹¹¹

In Nigeria, the CEDAW has made little or no difference in the lives of Nigerian women. Nigeria signed the CEDAW convention on April 23, 1984, and ratified it without any reservations on June 13, 1985. However, despite these efforts, the CEDAW is insufficient to safeguard women's rights in Nigeria because it has not been domesticated. According to section 12 of the Constitution, signed and ratified treaties do not take effect until a corresponding law is passed by the National Assembly.¹¹² In the case of *Medical Health Workers Union of Nigeria v Minister of Health and Productivity & Ors*, the Court of Appeal ruled that a Nigerian court cannot invoke and apply the provisions of an International Labour Convention until it has been re-enacted by an Act of the National Assembly. Therefore, despite ratification, CEDAW has no effect unless legislation adopts the convention's purpose.¹¹³

2.1.3 Optional Protocol to The Convention on The Elimination of All Forms Of Discrimination Against Women

In recognition of the potential of the CEDAW to amplify women's rights, especially in participating member states, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was created. The Optional Protocol was adopted by the General Assembly through Resolution 54/4 on October 6, 1999, and entered into force on December 22, 2000.

The Optional Protocol establishes an official complaint and inquiry mechanism for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The initiative for establishing the Optional Protocol to CEDAW arose from discussions by some State

¹¹⁰ Kerri L Ritz, "Soft Enforcement: Inadequacies of Optional Protocol as a Remedy for the Convention on the Elimination of All Forms of Discrimination against Women," *Suffolk Transnational Law Review* 25, no. 1 (2001): 202, <https://library.law.utoronto.ca/whrrarticle/soft-enforcement-inadequacies-optional-protocol-remedy-convention-elimination-all-forms>

¹¹¹ Ritz, "Soft Enforcement," 207. For example, Saudi Arabia rejected paragraph 2, art. 9 and paragraph 1, art. 29 of the CEDAW Stating that the country will not observe any of those provisions on the grounds that it conflicted with the norms of Islamic Law

¹¹² Onyeka Okongwu, "Are Laws the Appropriate Solution: The Need to Adopt Non-Policy Measures in Aid of the Implementation of Sex Discrimination Laws in Nigeria," *International Journal of Discrimination and the Law* 21, no. 1(2021): 37, <https://doi.org/10.1177/1358229120978915>.

¹¹³ *Medical Health Workers Union of Nigeria v Minister of Health and Productivity & ors* [2004] 17 NWLR pt. 953, 120.

parties about the benefit of including complaints within the framework of the Convention.¹¹⁴ The general aim was to establish a procedure that would provide individual women in the ratifying states with an avenue that would support effective communication.

It is essential to note that the Optional Protocol to the CEDAW does not create new rights for women other than those rights already embedded in the CEDAW itself. However, it seeks to strengthen the implementation of the CEDAW by establishing two additional measures---the communications procedure and the inquiry procedure. The communications procedure allows individual women and groups of women the right to file complaints with the Committee on the Elimination of Discrimination against Women concerning violations of the CEDAW. A complaint must satisfy several requirements for the Committee to consider the petition, including the depletion of domestic remedies and submission of a written communication. In addition, complaints and inquiries allowed under the Protocol only apply when a State is a party to both CEDAW and the Optional Protocol. These preconditions have made it difficult for women from states that have ratified the CEDAW, but not the Optional Protocol, to seek adequate redress.

The Optional Protocol also allows for the same “pick and choose” approach that the CEDAW embodies with the Opt-Out clause. The clause permits State parties to make reservations to the inquiry procedure outlined in Articles 8 and 9 that permits the Committee to investigate grave or systematic violations by the State party of the rights outlined in the CEDAW.¹¹⁵ Thus, the remedy the Protocol provides for CEDAW’s ineffectiveness in securing the rights of women is itself limited by permitting States to make reservations.

Nigeria made an early commitment to CEDAW and has made several similar commitments, such as The National Gender Policy of 2006, which focuses on women's empowerment and commitments to eliminate discriminatory practices. However, apart from this, no comprehensive national law on violence against women has been enacted. Despite the use of numerous legal instruments to combat violence against women and pursue justice for victims of gender-based violence, there is inadequate implementation by Nigeria even with the Optional Protocol.

2.1.4 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The United Nations General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR) on December 19, 1966. The treaty entered into force on March 23, 1976. It is one of the most comprehensive and widely accepted international human rights instruments.¹¹⁶

¹¹⁴ *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, G.A. Res. 54/4, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/54/49 (entered into force December 22, 2000). In Nigeria, the Optional Protocol was signed into law on September 7, 2000, and it was officially ratified on November 22, 2004.

¹¹⁵ Ritz, “Soft Enforcement,” 206.

¹¹⁶ *The International Covenant on Civil and Political Rights (ICCPR)*, 19 December 1966, 99 UNTS 171 (entered into force March 23, 1976). Nigeria ratified the ICCPR on July 29, 1993.

The Convention shares similarities with the CEDAW. However, it does not assume the responsibility of bringing women's rights to a better perspective as much as the CEDAW does.

Regarding the rights of women, Article 26 of the ICCPR provides that:

All persons are equal before the law and are entitled without any discrimination, to the equal protection of the law. In this respect, the law shall prohibit discrimination and guarantee equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.¹¹⁷

In furtherance of this provision, the Human Rights Committee of the ICCPR's general comments suggest, in similitude to the CEDAW, the removal of cultural impediments as an ideal framework to guide participating States in reforming domestic laws which perpetuate discrimination and inequality for women. In this light, Article 40 of the Human Rights Committee of the ICCPR states that:

Inequality in the enjoyment of rights by women worldwide is deeply embedded in tradition, history, and culture, including religious attitudes. The subordinate role of women in some countries is illustrated by the high incidence of prenatal sex selection and abortion of female fetuses. State parties should ensure that traditional, historical, religious, or cultural attitudes are not used to justify violations of women's rights to equality before the law and the equal enjoyment of all covenant rights. State parties should furnish appropriate information on those aspects of tradition, history, cultural practices, and religious attitudes that jeopardize or may jeopardize compliance with Article 3¹¹⁸ and indicate what measures they have taken or intend to take to overcome such factors.¹¹⁹

The ICCPR is one of the few international treaties providing for women's financial security during and after the end of a marriage. Article 23(4) of the treaty provides that:

State parties to the present Covenant shall take appropriate steps to ensure equal rights and responsibilities of spouses as to marriage during marriage and at its dissolution...No marriage shall be entered into without the free and full consent of the intending spouses.¹²⁰

While these provisions seemingly protect women's rights, especially in family settings, the reality is that the implementation measures adopted by State parties to realize most of its requirements are weak and have failed to produce the envisaged changes, especially at the

¹¹⁷ ICCPR, art. 26.

¹¹⁸ Article 3 of the ICCPR provides that State Parties to the present Covenant should undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

¹¹⁹ United Nations Human Rights Committee, "General Comments No 28 on the *International Covenant on Civil and Political Rights* under Article 3," CCPR/C/21/Rev.1/Add.5 (March 29, 2000), para. 4, <https://www.refworld.org/docid/45139c9b4.html>

¹²⁰ ICCPR, art. 23(4).

grassroots level. In particular, the prevalence of child marriages in the northern parts of Nigeria, on the ground that it is permitted by the Islamic religion, and the widespread adherence to customary but unfair property settlement after the death of a woman's husband in eastern Nigeria, are testaments to the fact that laws alone are not enough to change social attitudes to women's human rights.

2.1.5 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR)¹²¹ and the International Covenant on Civil and Political Rights are twin documents that the United Nations formulated after the UDHR.

The goals of equality and the quest to remove impediments to the enjoyment of equal rights between men and women are reiterated in the Preamble of the Covenant. In more explicit terms, the Covenant guarantees women's rights to education, healthcare, employment, and family life in a way that complements the general provisions of the CEDAW.

Article 2(2) of the Covenant stipulates that:

The State parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national, social origin, property, birth, or other status.¹²²

Furthermore, Article 3 of the Covenant also provides that:

The State parties to the present Covenant should undertake to ensure the equal right of men and women to the enjoyment of all economic, social, and cultural rights set forth in the Covenant.

The Covenant maintains the same position on the effect of discrimination in impeding women's quality of life as the other international treaties. In general, in Comment No. 20 on Economic, Social, and Cultural Rights, the elimination of discrimination provides that:

For State parties to guarantee that the Covenant rights will be exercised without discrimination of any kind, discrimination must be eliminated both formally and substantively.¹²³

¹²¹ *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, GA Res 2200 (XXI), UNGAOR Supp No 16, UN Doc A/6316 (entered into force January 2, 1976).

¹²² ICESCR, art. 2(2).

¹²³ United Nations Human Rights Committee, "General Comment No. 20 on Non-discrimination in Economic, Social and Cultural Rights of the *International Covenant on Economic, Social and Cultural Rights* under Article 2," E/C.12/GC/20 (July 2, 2009), para. 8.

The categorization of formal and substantive discrimination in the Comment is important to this thesis. Formal discrimination requires ensuring that a State's constitution and policy documents do not discriminate on prohibited grounds. Eliminating substantive discrimination requires paying sufficient attention to groups of individuals who suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. Highlighting the need to eliminate substantive discrimination buttresses the point that approaches toward eliminating gender discrimination should be contextualized. Merely enshrining the rule of non-discrimination in laws and policy documents will not suppress the socio-economic conditions perpetuating discrimination. Achieving substantive equality guaranteed to improve women's welfare requires adopting special measures that are reasonable, objective, proportional, and designed to produce long-term results.

This observation raises concerns about gender discrimination laws in Nigeria. Although Nigeria has ratified and implemented laws safeguarding women's rights, clearer regulations are needed to address contextual issues surrounding women's rights, particularly with respect to issues like inheritance and divorce settlements. Despite court rulings (discussed in the next chapter) declaring certain traditional customs and practices repugnant, the prevailing Igbo customary laws continue to disregard women's right to inherit specific properties from their parents and even exclude them from ownership of some land interests.

Though some Nigerian states have taken progressive and commendable steps by passing laws recognizing women's rights in regard to these issues, those steps are insufficient. A comprehensive national law covering areas where women are most vulnerable to discriminatory practices is necessary to acknowledge women's inheritance rights unequivocally, particularly in Igbo communities. Enacting and substantively implementing such legislation outside general blanket provisions would signify a pivotal stride towards gender equality, upholding women's rights across the country.

2.2 Regional Instruments in Respect of Women's Rights

Apart from the highlighted international laws and treaties above, some regional treaties include crucial provisions aimed at promoting and protecting women's human rights in Africa. Like their international counterparts, these regional human rights treaties also have oversight mechanisms to assess compliance with their provisions by the States that have ratified them. The most significant treaties are discussed in the next section.

2.2.1 The African Charter on Human and People's Rights

The African Charter on Human and People's Rights [African Charter] is an international human rights instrument intended to promote and protect fundamental human rights and freedoms in Africa. It was adopted by the then Organization of African Unity on June 27, 1981. It entered into

force on October 21, 1986.¹²⁴ The African Charter laid the foundation for institutionalized regional human rights promotion and protection in Africa. It provides a normative framework for implementing and promoting individual, civil, and political rights, economic, social, and cultural rights, and collective and people's rights as well as individual duties. The African Charter on Human and People's Rights asserts the universality of rights by affirming several rights elaborated in similar international human rights documents, especially the UDHR.

It also reflects the cultural context within which it intends State parties to implement all its Articles.¹²⁵ Accordingly, most of the Articles in the African Charter can be described as Afro-centric, with a contextual focus and a clear stance on the promotion of equal opportunities for men and women. Article 2 of the African Charter provides that:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present African Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, or other status.¹²⁶

Much as in the CEDAW, the African Charter does not specifically address the issue of women's rights but incorporates them by reference. For one, Article 18 provides that:

- a. The family shall be the natural unit and basis of society. It shall be protected by the State, which shall take care of its physical health and morals.¹²⁷
- b. The State shall have the duty to assist the family, which is the custodian of morals and traditional values recognized by the community.¹²⁸
- c. The State shall ensure the elimination of every discrimination against women and ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.¹²⁹

Article 18 of the African Charter holds considerable promise for women's human rights in Africa, but it still has several shortcomings. One such limitation is the lack of a comprehensive definition of discrimination. This leaves room for ambiguity in interpretation and translation. Additionally, the African Charter's emphasis on African culture has been criticized for its veneration of African culture and has also been construed as reinforcing gender oppression. While this may not be its primary intent, the language used in the African Charter regarding "traditional

¹²⁴ *African Charter on Human and People's Rights*, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982).

¹²⁵ See generally the Preamble to the African Charter on Human and People's Rights that provides that one of its aims is the eradication of all forms of colonialism from Africa and to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

¹²⁶ African Charter, art. 2.

¹²⁷ African Charter, art. 18(1).

¹²⁸ African Charter, art. 18(2).

¹²⁹ African Charter, art. 18(3).

rites” could have negative connotations, potentially safeguarding harmful cultural norms, practices, and institutions that negate women’s rights. One could argue that the requirement for States to support families as the “custodians of morals and traditional values” may be perceived as a barrier to reforming to those cultural norms, practices, and institutions that adversely affect women.

A common observation about the African Charter is that its provisions on women’s rights are sparse. Dankwa observed that the African Charter’s only provision on women’s rights inadequately addresses the specific needs and challenges faced by women as a group and gives insufficient direct attention to women as a group, avoiding direct scrutiny of the rights violations that they may encounter because of their gender, especially in family settings.¹³⁰ In support of this, Ankumah states that the African Charter also falls short in prompting States to alter the traditional roles of men and women in the family and society to achieve sexual equality.¹³¹ She argues that such an omission may be indicative of the drafters’ intention not to deviate from customary practices relating to women in general, and from provisions on marriage. While I do not agree with Ankumah’s submissions, the omissions may be indicative of the lack of awareness on the part of the drafters that for women’s rights in Africa to be meaningful, a specific focus on issues that affect them, and feasible implementation measures are required.

Another weakness in the African Charter is seen in its enforcement mechanisms. Thus far, these have been inadequate as means to resolve gender inequality and conflict issues in African States.¹³² The wording of the African Charter recommends that human rights abuses and conflict between States should be settled through bilateral negotiations or any other possible means. It goes further to recommend in Article 50 that the African Commission on Human and Peoples’ Right should only deal with human rights abuses after local remedies have been exhausted, but it fails to take into consideration the fact that some African states still grapple with anti-democratic practices. As a result, the exhaustion of local remedies may not be possible.¹³³

While giving recourse to local remedies in human rights laws and enforcement mechanisms is essential, the African Charter missed an opportunity to acknowledge traditional and cultural institutions as potentially useful avenues for dispute resolution that can complement local remedies in human rights laws and enforcement mechanisms. Both the Commission and the African Charter fail to provide a clear legal definition of what constitutes the exhaustion of local remedies within the African Charter. This ambiguity leaves room for uncertainty and challenges in addressing women’s rights violations effectively. In addition, given that many violations of women’s rights

¹³⁰ Hamalengwa Munyonzwe, Cees Flinterman, and Emmanuel Victor Oware Dankwa, *The International Law of Human Rights in Africa: Basic Documents and Annotated Bibliography* (Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1988)

¹³¹ Evelyn Ankumah, *The African Commission on Human and People’s Rights: Practices and Procedures* (Dordrecht: Martinus Nijhoof Publishers, 1996), 59- 60.

¹³² African Charter, art. 46.

¹³³ African Charter, art. 50.

involve the State as a party, this could make women's full enjoyment of their rights contingent on the effectiveness of domestic laws and the implementation of court judgements. Reliance on domestic laws and courts creates barriers to the protection and promotion of women's rights in local communities where systemic challenges exist. To address this shortcoming, it is important to consider the roles of traditional and cultural institutions alongside domestic legal systems in safeguarding women's rights and fostering gender equality.

2.2.2 The Protocol to The African Charter on Human and People's Rights on The Rights of Women in Africa

The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa¹³⁴ also known as the Maputo Protocol, was adopted in Maputo, Mozambique, on 11 July 2003.¹³⁵ The Protocol guarantees extensive rights to African women and is one of the world's most comprehensive and progressive women's human rights instruments.

According to its Preamble, the Maputo Protocol was adopted to address the concern that “despite the ratification of the African Charter on Human and People's Rights, and other international human rights instruments by the majority of State parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa continue to be victims of discrimination and harmful practices.”¹³⁶ This means that the Maputo Protocol should not be viewed primarily as a measure to correct the normative deficiencies in international human rights law dealing with women's rights but rather as a response to the lack of effective implementation of these norms.¹³⁷

Like most treaties, the Protocol encompasses many provisions relating to the elimination of gender-based violence and discrimination. Article 1 of the Protocol defines discrimination against women to mean “any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroys the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.”¹³⁸ It goes further to define harmful experiences to mean “all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education, and physical integrity.”¹³⁹ This definition

¹³⁴ *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, July 11, 2003, OAU Doc. CAB/LEG/66.6, 1 I.L.M 1000.

¹³⁵ Nigeria ratified the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women on 16 December 2004 and deposited its articles of ratification on 18 February 2005.

¹³⁶ Protocol to the African Charter, Preamble.

¹³⁷ Fareda Banda, “Blazing a Trail: The African Protocol on Women's Rights Comes into Force,” *Journal of African Law* 50, no. 1 (April 2006): 74, <https://doi.org/10.1017/S0021855306000076>.

¹³⁸ Protocol to the African Charter, art. 1(f).

¹³⁹ Protocol to the African Charter, art. 1.

is comprehensive, as it does not limit discrimination against women to only the effects of any differential treatment but also includes the objectives of such actions.¹⁴⁰

Most Articles under the Maputo Protocol emphasize that their adoption processes aim at every gender recognized in Africa, but some Articles specifically provide for women's rights. Thus, Article 3 on the right of women to dignity provides that:

Every woman shall have the right to dignity inherent in a human being and the recognition and protection of her human and legal rights; Every woman shall have the right to respect as a person and to the free development of her personality.¹⁴¹

The same Article 3 provides that State parties should adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.¹⁴²

The Protocol recognizes the need for substantive efforts towards eliminating discrimination against women due to the fact that women experience discrimination not only as a result of law but also social practice. Thus Article 2 of the Maputo Protocol mandates that State Parties combat all forms of discrimination against women through appropriate legislative, institutional, and other measures, including amending constitutions and legislative instruments to guarantee equality, mainstreaming, prohibiting, and taking corrective and positive action in those areas where discrimination against women continues to manifest.¹⁴³

Against this background and with the understanding that harmful socio-cultural patterns jeopardize the rights of women in Africa, the Maputo Protocol provides that:

State parties shall commit themselves to modifying the social and cultural patterns of conduct of women and men through public education, information, education, and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles of women and men.¹⁴⁴

The Protocol brings into the open the African Charter's premise that women are included in its protective scope, especially against harmful practices. Article 5 provides that:

States shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women, and which are contrary to recognized international standards...prohibit through legislative measures backed by sanctions all forms of female

¹⁴⁰ Martin Semalulu Nsibirwa, "A Brief Analysis of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women," *African Human Rights Law Journal* 1, no. 1 (2001): 49, <https://www.corteidh.or.cr/tablas/R21607.pdf>

¹⁴¹ Protocol to the African Charter, art. 3.

¹⁴² Protocol to the African Charter, art. 3.

¹⁴³ Protocol to the African Charter, art. 2.

¹⁴⁴ Protocol to the African Charter, art. 2(2).

genital mutilation, scarification, medicalization and para-medicalization of female genital mutilation and all other practices to eradicate them.¹⁴⁵

Unlike other African human rights instruments, the Maputo Protocol makes an explicit effort towards addressing contemporary and emerging issues, such as women's reproductive rights, than any other treaty does. It takes a far more expansive approach to accommodating these rights than the CEDAW. It protects women's reproductive rights by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother, or fetus.¹⁴⁶

The Protocol strives for a balanced approach to cultural consideration. While providing that women will have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies,¹⁴⁷ it also mandates that State parties to the Protocol must commit themselves to modifying the social and cultural patterns of conduct that affect the lives of women.¹⁴⁸

There are several reasons for adopting the Protocol's direct approach to protecting women's rights within the African Charter. This approach is a response to several factors, including the lack of full implementation of the African Charter since its inception and the influence of evolving international discussions on women's human rights. There is a growing inclination to make international human rights standards legally enforceable at the regional level. Secondly, the framework of the Protocol to the African Charter is also shaped by other factors that have significantly influenced the fight for women's rights within the African context. For example, through the continuing contribution of African feminist writings towards approaching international human rights standards from the African context, there has been a critical engagement through the literature with women and men about how their rights should be realized. Additionally, non-governmental organizations (NGOs) focusing on women's rights, especially at the grassroots level, strive to bring women's realities before legislators, judges, and other decision-making bodies by sharing those experiences.

The impact of the Protocol to the African Charter on improving women's rights in Nigeria is indisputable.¹⁴⁹ Although it may not be grounded on a full comprehension of the problems associated with African States and among African women, it is a step in the right direction. It is to be hoped that effective implementation processes working alongside effective accountability

¹⁴⁵ Protocol to African Charter, art. 5.

¹⁴⁶ Protocol to the African Charter, art. 14.

¹⁴⁷ Protocol to the African Charter, art. 17(1).

¹⁴⁸ Protocol to African Charter, art. 2(2).

¹⁴⁹ Dorothy Chioma Njemanze & 3 ors v. Federal Republic of Nigeria (ECW/CCJ/JUD/O8/17). Here the complainants filed a case at the Ecowas Court of Justice against the Federal Republic of Nigeria for verbal, physical and sexual assault. The court ruled that Nigeria was in violation of the Maputo Protocol, African Charter, CEDAW and other international human rights instruments.

mechanisms will ultimately serve to actualize the dream of a discrimination-free life for women in Nigeria.

2.3 DOMESTIC LAWS ON WOMEN’S RIGHTS AND PROTECTION IN NIGERIA

Through law making, the legislature has made steps to enact laws that protect women’s rights on paper, align with present social realities, and are feasible to implement. While the effectiveness of the laws passed so far is yet to be determined, this part of the thesis will assess domestic laws, and where applicable, policies enacted to protect women from gender discrimination and sexual violence in Nigeria.

2.3.1 Constitution of The Federal Republic of Nigeria

Due to the developing rules of democracy in Nigeria and awareness of the importance of equal rights between men and women in Nigeria, most women’s rights activists and even the courts in Nigeria turn to the Constitution of Nigeria as the “foremost” legal document in women’s fight for equality.¹⁵⁰ In this sense, the adequacy, or the inadequacy of several attempts to equally balance women’s rights with men’s is first judged based on the provisions of the Constitution.

The Constitution of Nigeria has a general provision prohibiting gender discrimination. In this regard, section 42 of the Nigerian Constitution provides that:

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, 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 disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, religious or political opinions are not made subject.¹⁵¹

In relation to women’s rights in Nigeria, certain provisions of the Constitution contained in Chapter II, referred to as the Fundamental Objectives and Directive Principles, lay the groundwork for some of the socio-economic rights that can benefit them. Specifically, section 17(3)(a) provides that:

The State shall direct its policy toward ensuring that all citizens without discrimination have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.¹⁵²

Like the provision in section 17, section 15(1) of the Nigerian Constitution, provides that “national integration shall be actively encouraged while discrimination on the grounds of place of

¹⁵⁰ Ebenezer Durojaye and Yinka Owoeye, “Equally Unequal or Unequally Equal: Adopting a Substantive Equality Approach to Gender Discrimination in Nigeria.” *International Journal of Discrimination and the Law* 17, no.2 (2017):71, <http://dx.doi.org/10.1177/1358229117704039>.

¹⁵¹ Constitution of Nigeria, Section 42(1)(a).

¹⁵² Constitution of Nigeria, Section 17(3)(a).

origin, sex, religion, status, ethnic, or linguistic association or ties shall be prohibited.”¹⁵³ Stating that the State of Nigeria is founded on the ideals of freedom, equality, and justice, the Constitution further provides “every citizen shall have equality of rights, obligations and before the law.”¹⁵⁴

These provisions have been regarded as guaranteeing the socio-economic rights of Nigerians and the right to life. Sadly, they have been described as mere directives of social policy and found to be not justiciable. In this context, section 6(6)(c) of the Constitution prohibits courts from examining the compliance or otherwise of the provisions of the Chapter. Some writers have pointed out that the use of the word “shall” in most of the provisions of the Constitution does not allow for a “discretionary” or “optional” implementation for the benefits granted in the provisions.¹⁵⁵ However, regardless of this choice of language by the drafters, the extent to which the provisions of the Chapter can be implemented has been obstructed by the provisions of section 6(6)(c).¹⁵⁶

2.3.2 Violence Against Persons (Prohibition) Act 2015

The Violence Against Persons Act¹⁵⁷ (VAPP Act) is one of the statutes aimed at protecting women from violence in Nigeria, although an introduction to the Act describes it as:

An Act to eliminate violence in private and public life, prohibit all forms of violence against persons and provide maximum protection and effective remedies for victims and punishment of offenders.

The VAPP Act covers various forms of violence against men and women, focusing on gender and sexual-based violence in Nigeria. It contains provisions on different aspects of violence, and this has arguably transformed the lens through which the landscape of violence against women is now seen in Nigeria.

The VAPP Act has forty-seven sections, is divided into six parts and has a schedule. It provides for a range of offences that criminalize a broad range of offences like rape, physical injury, spousal battery, and harmful traditional practices.¹⁵⁸ Among its very progressive features is its all-inclusive definition of rape. Under the VAPP Act, rape is defined as “the intentional penetration of the vagina, anus, or mouth of another person with any other part of his or her body or anything else...the other person does not consent to the penetration; the consent is obtained by

¹⁵³ Constitution of Nigeria, Section 15(2).

¹⁵⁴ Constitution of Nigeria, Section 17(2)(a).

¹⁵⁵ Linus Nwauzi, “Justiciability of Fundamental Objectives and Directive Principles of State Policy Under the 1999 Nigerian Constitution,” *International Journal of Law* 3, no. 5 (September 2017):37, <https://dx.doi.org/10.2139/ssrn.2140361>

¹⁵⁶ Iyabode Ogunniran, “Gender Issues and The Nigerian Constitution: A Ray of Light, Or Twilight on The Horizon?” *Gender Questions* 3, no. 1 (2016): 119, <https://doi.org/10.25159/2412-8457/823>.

¹⁵⁷ Violence Against Persons (Prohibition) Act, 2015.

¹⁵⁸ Violence against Persons Act, Section 14, 15, 19, and 20.

force or by means of false and fraudulent representation as to the nature of the act”...¹⁵⁹ The Act employs simpler language compared to the provisions in the Criminal Code¹⁶⁰ and the Penal Code,¹⁶¹ aligning it better with modern realities, particularly as the offense of rape now encompasses all genders. Based on this definition, the VAPP Act recognizes spousal rape and does not explicitly exclude any husband or wife from being guilty of this offense when contravening this position.

Besides this novel definition of the offence of rape, the VAPP Act goes further in recognizing an unspoken form of violence that Nigerian women experience daily---economic abuse. Notably, for this thesis, the Act recognizes economic abuse as a form of abuse and its inclusion as an offence under its provisions. According to the VAPP Act, “economic abuse is a form of forced financial dependence, denial of inheritance or succession rights, the unreasonable deprivation of economic or financial resources to which any person is entitled...”¹⁶² The Act’s recognition of economic abuse supports the ruling of the court in *Ukeje v Ukeje*, where the Supreme Court held that the customary law that allowed females to be disinherited in favour of males violated the Constitution on the ground of discrimination and was therefore void.¹⁶³ Although the abolition of the practice as ruled in the case is yet to be fully implemented in Indigenous Igbo communities, the inclusion of economic abuse as a form of abuse under the VAPP Act is significant and noteworthy because it can be reasonably inferred that the provision has a strong focus on private arrangements in family settings that deny women their rights to inheritance and even an equitable share in family property, particularly in the event of a divorce.

The VAPP Act also provides a blanket provision against harmful traditional practices and defines it as all traditional behaviors, attitudes, or practices that negatively affect the fundamental rights of women, girls, or any person.¹⁶⁴ This definition is all inclusive and it recognizes that harmful traditional practices are a form of discrimination against women and usually emanate from gender inequality. These practices reinforce women’s subjugation to discrimination, which is usually rooted in commonly shared social and cultural beliefs. As I discuss in Chapter 3 below, these harmful traditional practices typically include widowhood rites on the death of a husband, male child preference, childhood marriages, female genital mutilation, mandatory shaving of woman’s hair on the death of her husband, and cultural atonement practices used when adultery is alleged against a woman.

Undoubtedly, the enactment of the VAPP Act represents a more significant milestone in providing women with protection against violence in Nigeria than any other domestic law. However, it is not without shortcomings. One prominent concern with the VAPP Act is that, taken

¹⁵⁹ Violence against Persons Act, Section 1(1).

¹⁶⁰ Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria, 1990, Section 357.

¹⁶¹ Penal Code, Chapter 345, Laws of Northern Nigeria 1963, Section 282.

¹⁶² Violence against Persons Act, Section 12(1).

¹⁶³ *Ukeje v Ukeje* (2014) 11 NWLR pt. 1418, p.384.

¹⁶⁴ Violence against Persons Act, Section 20(1).

as a whole, it is not gender-sensitive enough to address the prevalence of violence against women in Nigeria. For one, the title of the VAPP Act and its definition of "violence" does not specifically acknowledge women as clear beneficiaries of the Act, thus potentially weakening the focus on violence against women.¹⁶⁵ By adopting a broader definition that captures women, men and children as persons protected by the Act, the specific issues of violence against women may be overshadowed. Ideally, a law on violence against women should unequivocally identify women as beneficiaries and acknowledge that violence against them is a form of discrimination. By failing to do so, the legislature missed an opportunity to provide a clear focus on protection for vulnerable women in Nigeria. Many state laws in Nigeria have failed to address gender-based violence and gender-based discrimination comprehensively. The VAPP Act could have achieved this had it not taken a gender-neutral approach.

The VAPP Act also fails to adequately consider the need for effective implementation mechanisms, considering that most legislation that appears to protect women's rights is rarely fully implemented at the grassroots level. In addition, the VAPP Act focuses on articulating offences and their penalties but neglects to address preventative measures that would have complemented its efforts in protecting women's rights.¹⁶⁶

As a best practice, a comprehensive approach for any legislation addressing violence against women would integrate both punitive measures and proactive strategies to create a more robust framework for combatting violence against women. By including preventive approaches, educational interventions, awareness-raising, and, most especially, professional training for those working with areas of sexual violence and gender discrimination, a more holistic framework can be established to tackle violence against women and discriminatory practices.¹⁶⁷ Including such provisions is desirable as there is need for heightened awareness of these issues given that social behaviours that perpetuate discriminatory practices are often ignored under the guise of culture.

2.3.3 Gender and Equal Opportunities Bill 2016

The Gender and Equal Opportunities Bill 2016 was introduced in response to the need for the implementation and enforcement of certain provisions of the CEDAW and the Protocol to the CEDAW regarding women's rights. The Bill guarantees women's rights to equal employment opportunities, inheritance rights for both male and female children, equal rights for women in marriage and divorce, and gender equal access to education, property/land ownership and inheritance.¹⁶⁸ In addition, the Bill gives effect to certain provisions of the 1999 Constitution

¹⁶⁵ Cheluchi Onyemelukwe, "Legislating on Violence Against Women: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act 2015," *DePaul Journal of Women, Gender, and the Law* 5, no. 2 (2016):16, <https://via.library.depaul.edu/jwgl/vol5/iss2/3>

¹⁶⁶ Onyemelukwe, "Legislating on Violence," 38.

¹⁶⁷ Onyemelukwe, "Legislating on Violence," 55.

¹⁶⁸ Queen Esther Iroanusi, "Again, Gender Equality bill suffers setback at Senate," *Premium Times*, December 15, 2021) <https://www.premiumtimesng.com/news/headlines/500980-again-gender-equality-bill-suffers-setback-at-senate.html?tztc=1>.

dealing with Fundamental Objectives and Directive Principles of State Policy and Fundamental Human Rights. To further address the effects of gender discrimination and to provide equal opportunities for women, the Bill also contains provisions dealing with the prohibition of discrimination, adoption of measures to eliminate discrimination in political and public life, prohibition of violence against women, the establishment of an Equal Opportunities Commission, and the enforcement of the National Gender Policy amongst its other features.¹⁶⁹

2.4 CONCLUSION

It is clear from the foregoing that there is no shortage of relevant laws for Nigerian courts to use to protect women's rights. Yet, despite the plethora of international, regional, and domestic laws discussed in this chapter, women in Igbo communities continue to be victims of gender discrimination and sexual violence. The law's inadequacy in effectively protecting women's rights is often evident, especially with respect to implementation challenges at the grassroots level.

In eastern Nigerian societies, where culture and law are intricately intertwined, long-term solutions are required to change the normative culture that enables discriminatory practices at the grassroots level. Implementing these laws must be culturally sensitive and contextualized, taking into proper account deeply ingrained gender assumptions and social practices. Ignoring cultural influences when implementing State laws will only contribute to systemic discrimination against women, especially in local communities.

¹⁶⁹ As of October 4, 2023, the Bill had not been enacted and was still under review.

CHAPTER THREE

SEXUAL VIOLENCE AND GENDER DISCRIMINATION IN IGBO COMMUNITIES AND PREDOMINANTLY IGBO REGIONS IN NIGERIA

3.0 INTRODUCTION

In Igbo communities, violations of women's rights largely occur in private spaces that applicable laws often struggle to reach. The previous chapter examined laws that were designed to protect women's rights but are inadequate to address these discriminatory practices.

This chapter examines this inadequacy by focusing on three significant socio-legal problem areas that highlight the limitations of laws alone in improving women's experiences in Igbo communities. These areas include the financial and economic exploitation of women in the region, particularly in relation to divorce settlements, cultural inheritance practices, and sexual violence in the context of adultery atonement practices in Igbo society. These issues are rooted in longstanding traditional practices that are resistant to change despite the enactment of State laws that mandate change.

3.1 Financial And Economic Exploitation of Eastern Nigerian Women

Introduction

Economic exploitation and financial violence against women are one of Nigeria's least explored areas of gender-based violence. Consequently, there is a lack of comprehensive data on the prevalence and forms of economic violence. Instead, the focus is often on sexual and domestic violence. Nevertheless, for women in economically disadvantaged countries like Nigeria, economic exploitation and financial violence are daily realities.

This section of the thesis focuses on economic/financial abuse, particularly through discriminatory laws against women concerning inheritance and property rights, use of communal land, and maintenance after divorce or widowhood, especially among the Igbos. One reason for exploring this type of abuse is its connection with other areas highlighted here in which women are robbed of their rights.

3.1.1 Definition of Economic Violence/Financial Abuse

In the literature,¹⁷⁰ the terms, 'economic abuse' and 'financial abuse,' are frequently used interchangeably, leading to the assumption that both involve very similar behaviour.

Economic violence occurs when an abuser controls the victim's financial resources and activities. It also involves behaviours that limit the victim's ability to acquire, use, and maintain

¹⁷⁰ Judy L Postmus et al, "Economic Abuse as an Invisible Form of Domestic Violence: A Multi-country Review," *Journal of Trauma, Violence and Abuse* 1, no. 1 (March 2018):261, <https://doi.org/10.1177/1524838018764160>.

economic resources, thus threatening her economic security and potential for self-sufficiency.¹⁷¹ The behaviours involve coercive control which typically manifests when women are denied independent access to the means to earn a living or denied funds needed for necessities like food and clothing. Economic violence or financial abuse can result in complete economic dependence on the perpetrator, with the victim having no control over their financial resources or access to economic resources.¹⁷² Although abuse can be perpetrated by anyone, economic/financial abuse is a form of gender violence predominantly committed by males who exercise absolute control over all available financial resources, often leaving their female partners completely dependent on them for the means to meet their most basic needs.

3.2 Economic Violence and Gender Roles in Cultural Igbo Society

Economic abuse and expectations associated with gender roles in Igbo society are interconnected. Despite some assertions by pro-cultural writers that socioeconomic arrangements in precolonial Igbo society allowed women to hold economically advantageous positions, the reality is that over the years social norms have developed in ways that view women as less productive, leading to the exploitation of women.¹⁷³

In Igbo communities, gender roles and cultural norms that discriminate against women present barriers to women's economic self-sufficiency. Finances and access to economic resources are seen through a gendered lens, with men being socialized and culturally groomed to control the family's economic resources. Women's roles, even in pre-colonial society, were shaped by traditional agricultural practices according to which they were only permitted to engage in specific activities.

Traditional occupations in Igbo society were highly gendered, and responsibilities and roles were ascribed to improve the functionality of communal living. Men were primarily seen as the "tillers of the soil", responsible for labour-intensive tasks such as ploughing, planting, and harvesting. They owned and cultivated the most profitable crops, such as palm oil, cocoa, and cotton. They were farmers, blacksmiths, hunters, and fishers and did most of the long-distance trading, giving them a higher profit than local and regional trading, which were left to the women. The responsibilities assigned to women reflected the perception that they were tolerant of difference, collaborative, non-violent, peaceful, and primarily focused on motherhood. Women were seen to perform essential roles that were complementary to the male effort, like cooking,

¹⁷¹ Olufunmilayo I Fawole & Celia Awai, "Economic Abuse against Women Working in the Formal and Informal Sectors in Warri, Nigeria," (Paper delivered at the 7th African Population Conference, Session 130: Social Context of Gender-based Violence November 30, 2015).

¹⁷² Ömer Alkan, Şenay Özar & Şeyda Ünver, "Economic Violence Against Women: A Case in Turkey," *PLoS One* 16, no.3 (2021): 1, <https://doi.org/10.1371/journal.pone.0248630>.

¹⁷³ Van Allen, "Sitting on Man," 168.

selling produce, and brewing. However, these roles were often not viewed as being of equal importance to the roles fulfilled by men.¹⁷⁴

In Igbo society, cultural norms or widely held beliefs that rob women of their rights intertwine with the significance attributed to land. Land is regarded as the commonwealth of the people and the backbone of their economy. Hence, the economic structure of the Igbo cultural society is determined by land ownership. As Henderson and Ledebur observed, an economy is intricately connected to social relations and political institutions and systems that govern how people in each community produce, distribute, and exchange the products of their labour.¹⁷⁵ The economy represents the correlation of interrelationships with the social, political, and economic organization of human life. Understanding the role of land in these relationships is necessary to understand how roles and expectations are attributed to the people who hold it.¹⁷⁶ Complex considerations determine relationships with land in any given society. These considerations also regulate the people's connection to the land, specifically, the power of disposition, which is highly contested when it comes to women's rights. Most of the considerations that governed land ownership, its use, and disposition, were historically interwoven with cultural relations, economic considerations, religion, and politics. In Igbo society, however, ownership of land to the exclusion of others primarily revolved around the need to secure a home base and satisfy spiritual needs, political power, continuity, and social benefits.¹⁷⁷

In Igbo society, cultural norms emphasize the significance of land, which is almost always held on the grounds of continuity. This is particularly evident in the common practice of denying women land ownership but allowing them to use it in their local communities. The concept of continuity serves as a rationale for maintaining the Igbo land tenure system. Some writers advocating for cultural respect point to the ability of the Igbo customary system of inheritance to provide for all family members, including widows, through traditional practices. Properly applied, the continuity principle of inheritance has some merits, such as ensuring that a son not only inherits property but also takes on duties as successor in title to his father, caring for his family.¹⁷⁸

According to Ephraim Chukwu, the controversy about female land inheritance in Igbo society can be better understood if the functional approach from which the culture is sustained is

¹⁷⁴ Erik Green, "Production Systems in Pre-colonial Africa," in *The History of African Development: A Textbook for a New Generation of African Students and Teachers*, Ewout Frankema et. al., (Netherlands: African Economic History Network, 2023), 30, <https://doi.org/10.18174/590864>.

¹⁷⁵ William Leroy Henderson and Larry C Ledebur, *Economic Disparity; Problems and Strategies for Black America* (New York: Free Press, 1970), 102.

¹⁷⁶ Christian Chukwuma Opatá and Odoja Asogwa, "Title, Rituals, and Land Use: The Heritage of a Nigerian Society," *Econ Papers* 7, no. 2 (2017): 3, <https://doi.org/10.1177/2158244016689129>.

¹⁷⁷ Joseph Ugochukwu Ogbuefi, "Analysis of Motives for Land Ownership Among the Igbos of Southeastern Nigeria." *A Multi-disciplinary Journal for the Environmental Sciences* 3, no. 2 (August 2000):415.

¹⁷⁸ Uche Ewelukwa, "Post-Colonialism, Gender, and Customary Injustice: Widows in African Societies," *Human Rights Quarterly* 24, no. 2 (2002): 444, <https://doi.org/10.1353/hrq.2002.0021>.

studied.¹⁷⁹ The functional perspective of the Igbo land tenure system helps shed light on the cultural reasoning behind the distinction in property inheritance practices between male and female members in Igbo society. In clarifying her assertion, she distinguishes between moveable properties, which she refers to as *Akunwerenjeha*,¹⁸⁰ and immovable properties, which she describes as *Akuenweghiniegha*.¹⁸¹ In her view, women are entitled to moveable properties upon inheritance because land ownership in Indigenous Igbo communities is traditionally passed down from kinsmen to kinsmen. On the other hand, a female child is expected to marry out of her biological family to another family where she is expected to build her new home. Ephraim argues that upholding the right of the female children to inherit land goes against the ideals of family stability, cooperation, and order based on a value consensus that the Igbo people have always cherished. She emphasizes that females are not discriminated against in that they are entitled to moveable property.¹⁸²

Practices related to female land inheritance vary across different communities in Igbo society. In certain instances, the patterns of land inheritance allow a woman to own and farm on land while the marriage with her husband subsists. However, if the marriage ends either by death or by choice of any of the parties, the right to the use and occupy the land reverts to the man or to the man's family in the event of death.¹⁸³ In other communities, women can be economically secure through land usage and possession as long as they have male children in a family. While such security does not automatically translate into ownership, a woman can enjoy economic benefits through her first son, who is responsible for his mother's maintenance after his father's death.¹⁸⁴

The practice of acknowledging gender roles in determining land inheritance has been challenged internally and externally.¹⁸⁵ Despite the justification that these practices were established to guarantee the proper maintenance of women and to ensure that they were not exploited, it is still evident that they do not align with the lived realities of many women in eastern

¹⁷⁹ Anthonia Chinyere Ephraim-Chukwu, "Investigating Inheritance in Igboland: The Awgu Customary Example," *Odezuruigbo Journal: An International Journal of Igbo, African and Asian Studies* 3, no. 1 (2019): 268.

<https://www.nigerianjournalsonline.com/index.php/ODEZURU-IGBO/article/view/1154>

¹⁸⁰ This Igbo term typically translates wealth that can move, and examples include cars, clothes, kitchen utensils, farming implements etc.

¹⁸¹ Also, an Igbo term means wealth "that cannot be moved." It typically includes houses, lands, and economic trees like palm trees, cocoa, and rubber.

¹⁸² Ephraim-Chukwu, "Investigating Inheritance," 265.

¹⁸³ See also the case of *Nezianya v Okagbue* (1963) 1 ALL, NLR 352, here the court held that possession by a widow of her husband's lands cannot be averse to the right of her husband's family to enable her to acquire an absolute right to possession of it against the family.

¹⁸⁴ Motunade Oyediran, "A Review of the Igbo Traditional System of Inheritance and an Examination of the Discriminatory Aspects Considering Recent Pronouncements by Courts in Nigeria," *Mo's Blog*, September 13, 2019 <https://motun911.wordpress.com/2019/09/13/igbo-law-of-succession/>.

¹⁸⁵ Eweluka, "Post-colonialism," 446.

Nigeria. The justification based on the rules of exogamy¹⁸⁶ does not explain why women are excluded from inheriting properties that are not considered part of family or ancestral holdings. It also fails to satisfactorily address why single, divorced, and widowed women are excluded from a share in the family property. If the primary aim is to limit the ability of women who married out of a family to continue to exercise control over their father's house, such exclusion should not limit the rights of unmarried women from a family's line of succession. These discrepancies underscore the need to examine the cultural norms surrounding land inheritance among the Igbo people.

While some of these practices may have been deemed acceptable in societies where the family organization adopts traditional customary patterns, it is now essential to critically assess their continued practice and make the necessary changes. Questions arise, such as: What should women's inheritance rights entail? How can we discern which existing practices align with Indigenous Igbo culture? How can we respond to human rights demands and develop a more equitable system?

3.3 Women's Land Inheritance Rights in Igbo Society

This section of the thesis delves further into the issue of inheritance in Igbo society, specifically focusing on land and landed properties. These assets hold significant economic and social value and significance, making the controversy over inheritance practices worth examining. To this end, the examination encompasses the prevailing inheritance practices in Igbo communities, how the courts have assessed these practices and interpreted them, relevant legal provisions, and their level of implementation.

The common notion is that inheritance in Igbo society is gendered. The idea that Igbo women do not own land and cannot inherit property has been widely discussed in social anthropology.¹⁸⁷ It is true that the inheritance system in the Igbo society is structured along patrilineal lines, and this is more pronounced with land inheritance.

In Nigeria, inheritance is governed by the various rules of succession recognized within its legal system, comprising two main types: testate and intestate succession. Wills and the applicable law with respect to wills govern testate succession in which property is distributed based on the specific guidance of a legally recognized and binding will. In contrast, intestate succession occurs when a person dies without leaving a valid will. In intestate succession, customary inheritance rules are applied to determine how property is to be shared among the beneficiaries.

In Igbo communities, situations that lead to women being denied their rights to land inheritance often take a complex form. The practices regarding land ownership and inheritance in

¹⁸⁶ In Sociology, exogamy is defined as marriage outside a specific group especially as required by law or custom. In relation to the Igbo community exogamy is a common reason why the practice governing inheritance has been supported. In the sense that based on intermarriage

¹⁸⁷ George Thomas Basden, *Among the Ibos of Nigeria: An Account of the Curious & Interesting Habits, Customs & Beliefs of a Little-known African People by One Who Has for Many Years Lived Amongst Them on Close & Intimate Terms* (London: Seeley, Service & Co. Ltd., 1921), 32.

Igbo society arise from the customary rule of land succession: the primogeniture rule. The primogeniture rule provides that inheritance succession is through the family's eldest male person. In Igbo lingua, the oldest male in the family is usually referred to as the "Okpala," "Diokpala", or "Diokpa". This rule remains consistent regardless of the family arrangements. In a nuclear family setting, succession is through the eldest male child of the deceased. In contrast, in an extended family, succession is through the eldest son of the ancestor in a particular lineage. In such cases, the "Okpala" may be younger than other extended family members.¹⁸⁸

In the context of land inheritance in Igbo society, customary succession laws are not always uniform. However, the rule of primogeniture is a common practice. Some African writers have drawn some distinctions in an attempt to correct the impression that the Igbo primogeniture rule of succession always mean that the eldest surviving son inherits the estate of his deceased father to the exclusion of other children.¹⁸⁹ Considering this perspective, Ben Nwabueze, proposed two ways the principle of primogeniture could operate in the customary Igbo rule of succession to wit: (a) succession to the headship of the immediate deceased family; and (b) succession to the deceased as sole inheritor.¹⁹⁰ In his opinion, the first form, the eldest surviving son inherits from his deceased father only as the new head of the family. In this scenario, he becomes the new head of the family, it does not make him the sole inheritor. He holds the property in trust for the other children and cannot sell the deceased's property without the consent of the other children. On the other hand, the second form of primogeniture allows the eldest surviving son, upon his father's death and upon the fulfillment of some customary obligations, to inherit absolutely from his father as a sole inheritor.¹⁹¹

In discussing customary land inheritance practices in Igbo society, the first form of the primogeniture rule is most preferred, especially to soften the patriarchal consciousness around the practice. The rationale behind this form of the primogeniture rule was the maintenance of family welfare and stability. Since pre-colonial Igbo society was concerned with the overall interest of the family, it was ideal to adopt rules of inheritance centred on protecting family structures to perpetuate clan lineage and keep wealth within the family. Under this system, heirs not only inherited the properties of the deceased persons but also assumed the responsibilities to maintain the deceased's dependents and preserve family continuity. By adopting this form of the primogeniture rule, families could work collectively to ensure the well-being of the family, through which prosperity can be continually maintained.

Nwabueze's analysis of the primogeniture rule in Igbo society presents the possibility of re-evaluating how the rule is understood and applied. However, it does not clarify how the practice

¹⁸⁸ Gabriel Uchechi Emeasoba, "An Evaluation of The Nigerian Judicial Attitude to The Igbo Customary Law of Succession," *African Customary and religious Law Review* 1, no. 1 (2022): 15, <https://www.nigerianjournalonline.com/index.php/ACARELAR/article/view/2257>

¹⁸⁹ Ben O Nwabueze, *Nigerian Land Law* (Enugu: Nwamife Publishers, 1972), 396.

¹⁹⁰ Nwabueze, *Nigerian Land Law*, 392-398.

¹⁹¹ Emeasoba, "An Evaluation," 13.

aligns with the principles of equality and non-discrimination between genders in local communities. By prioritizing gender as the sole consideration in determining family headships regardless of seniority or capability, there is a risk of jeopardizing women's economic security through land ownership.

Furthermore, the international legal community has also recognized the interconnectedness between land and economic security. Access to land is foundational for ensuring security, shelter, income, and potential gender-equitable livelihoods, and several laws seemingly protect this right.¹⁹²

In the African context as well, the Maputo Protocol in recognizing the right to food security as connected with land provides that:

State parties shall ensure women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food.¹⁹³

Additionally, the Maputo Protocol provides that “women and men shall have the right to inherit in equal shares their parent’s properties, and a widow shall have the right to an equitable share in the inheritance of the property of her husband.”¹⁹⁴ The Constitution of Nigeria also provides a framework for the realization of most of these provisions. It addresses discrimination and its antecedents broadly and enshrines equality of rights, obligations, and opportunities before the law.¹⁹⁵

The provisions highlighted above, which emphasize fair dealing regarding women's inheritance rights, may conflict with some succession laws in Nigeria that prioritize the applicability of customary succession rules. For instance, section 49(5)(b) of the Administration of Estates Law of 1959, applicable in the western states of Nigeria, provides that “any real property, the succession of which cannot by customary law be effected by testamentary disposition, shall descend in accordance with customary law...”¹⁹⁶

In this same vein, section 3 of the Wills Law of Bendel State¹⁹⁷, still applicable in southern Nigeria, provides that:

¹⁹² CEDAW, art. 13. Specifically, it encourages State parties to take all appropriate measures to eliminate discrimination against women in other areas of economic and social life to ensure, on a basis of equality of men and women, the same rights in particular.

¹⁹³ Protocol to the African Charter, art. 13.

¹⁹⁴ Protocol to the African Charter, art. 21.

¹⁹⁵ Constitution of Nigeria, Section 17(1) & (2)(a).

¹⁹⁶ Administration of Estates Act, 1959.

¹⁹⁷ Wills Law of old Bendel State, Cap 133 Laws of Western Nigeria 1958, applicable to Lagos, Ogun, Osun, Ondo, Edo, and Delta States.

Subject to any customary law thereto, it shall be lawful for every person to devise, bequeath or dispose of by his will executed in a manner hereinafter required, all real and all personal estate which he shall be entitled to, either in law or equity, at the time of his death and which if not so devised, bequeathed and disposed of would devolve upon the heir at law.

Based on previous court judgements regarding intestate succession in Nigeria, these provisions have been interpreted to mean that in cases where a deceased person dies intestate, the rules of customary law applicable to them during their lifetime determine how their estate is distributed.¹⁹⁸

This principle has been applied in previous cases in Nigeria, including cases that the Supreme Court has determined. A renowned example is the case of *Nzekwu v Nzekwu*.¹⁹⁹ In this case, the High Court determined the validity of a customary law of succession of a deceased who had died intestate. The Plaintiff was the widow of the deceased, originally from Anambra, and had lived in the northern city of Jos. The Plaintiff's husband was an uncle to the first defendant and the younger brother of a certain Nathaniel Nzekwu. The Plaintiff's husband, the first defendant's father, and Nathaniel Nzekwu were all sons of Nzekwu Ojudu, who had died in 1906. Upon the death of the Plaintiff's husband in Jos, she returned to Onitsha, in eastern Nigeria, and resided there. During her stay, she rented parts of the land to tenants and paid the required dues and rates on the land. However, she was forced to leave the property during the outbreak of the Nigerian Civil War. Upon her return, she found the second defendant in possession of the land, who claimed it had been sold to him by the first defendant. The second defendant sold the house again to the third defendant, prompting the Plaintiff to institute an action in court to recover the premises.

When the case came before the trial court at Onitsha, the judge ruled in favour of the plaintiff after considering the arguments of both parties. Dissatisfied with the trial court judge's decision, the defendant approached the Court of Appeal to have the court's judgement overturned. However, the Court Appeal ruled in favour of the Plaintiff and upheld the trial court's decision. Subsequently, the case was brought before the Supreme Court, although the Plaintiff was already deceased. In determining the rights of the parties involved, the court pointed out that the appropriate legal action for the Plaintiff should have been the "recovery of possession" and not trespass, given that she did not own the property at the said time.²⁰⁰ Regarding the issue of the customary law in question that denied the plaintiff ownership, the Supreme Court held that:

- (a) The Onitsha Native Law and tradition that stipulates that a widow with no male child may deal with her deceased husband's property but with the concurrent consent of her late husband's family is equitable.

¹⁹⁸ See *Adeniyi Oluwo & Ors v. Olabowale Oluwo & Ors* (1985) 3 NWLR (pt. 13) 372 where the High Court held that the appropriate law to be applied in the case of intestate succession is the deceased customary law. That is, the deceased's customary law will be applicable even though the deceased died outside his ethnic locality or leaves properties outside his hometown.

¹⁹⁹ *Nzekwu v Nzekwu* (1989) 2 NWLR pt. 104, 373.

²⁰⁰ Edeh Samuel Chukwuemeka, "Nzekwu v Nzekwu: Facts, Issues and Decision of Court", *Bscholarly*, July 14, 2022, <https://bscholarly.com/nzekwu-v-nzekwu/>.

- (b) The widow cannot, by the passage of time, assert the property as her own, even though she has the right to dwell in a building or part of it but based on her good conduct
- (c) A widow who elects to remain in the late husband's house is entitled to occupy the marital home and a share of the late husband's farmland for cultivation and maintenance by her husband's family.
- (d) If her late husband's family does not maintain the widow, she can let part of the building to the tenants to support herself. It needs to be stressed that the widow's stake in her deceased husband's home and acreage is only possessory as against proprietary. Hence, she lacks the right to discard them at her discretion.
- (e) The Onitsha custom, which grants the right to the Okpala to divide the property of his deceased father in the widow's lifetime, is barbaric. Such uncivilized traditions are repugnant to natural justice, equity, and a good conscience and are non-permissible.

Examining the Supreme Court's words is essential to understanding how the primogeniture rule was still partly sustained in earlier court decisions regarding land inheritance rights in the Igbo community under intestate succession. In the case of *Nzekwu*, the court remarked that the rule that grants exclusive rights to the "Okpala" to divide the deceased's property while his wife was still living was repugnant. However, the court missed the opportunity to address whether only granting the applicant possessory rights and not proprietary rights still amounted to discrimination and inequality in rights.

Cases like *Nzekwu*'s largely support adopting the primogeniture rule on the basis of the "best interest of the dependant's principle". This principle aligns with the primogeniture rule described by Nwabueze, which involves the succession to the headship of the deceased's family. In Nwabueze's opinion, this form of the primogeniture rule is better suited to reflect the inheritance practices of the Igbo society.²⁰¹ The best interest of the dependant's principle requires that legislative or judicial actions regarding the customary law of intestate succession must consider the overall welfare of everyone maintained by the deceased person shortly before death. This means considering the interest of the deceased spouses, children, siblings, parents, and even cousins when distributing the properties of an intestate person.²⁰² To determine the best interests of the dependants when deciding the disposition of property of a deceased person who died intestate in accordance with customary law, it may be wise to consider how people have adapted or are adapting to the social structures in which the male primogeniture rule emerged. This consideration is important because customary law is constantly changing, and determining how the primogeniture rule is applied can help understand the foundational value in the practice. This opinion is not alluding to Ephraim Chukwu's²⁰³ views on land inheritance practices in the Igbo society but rather to the benefits of upholding stability in how the practice is interpreted. From this

²⁰¹ Nwabueze, *Nigerian Land Law*, 399.

²⁰² Anthony C Diala, "Reform of the Customary Law of Inheritance in Nigeria: Lessons from South Africa," *African Human Rights Law Journal* 14, no. 2 (January 2014): 637, <https://www.saflii.org/za/journals/AHRLJ/2014/31.html>.

²⁰³ Ephraim-Chukwu, "Investigating Inheritance," 270.

viewpoint, one can infer that the foundational value guiding adaptation of the primogeniture rule in the Igbo society is the duty of care owed to family members by family heads.

Although not expressly stated, the court has subtly adopted the best interests of the dependant's principle in adjudicating customary law inheritance disputes. In Nzekwu's case, the apex court differentiated between the proprietary and possessory rights of the plaintiff to the deceased's property.²⁰⁴ By acknowledging and confirming only her possessory rights, the court retained the interpretation that preserves property for the use of other recognized dependants of the deceased, rather than granting sole ownership to one individual.

In the more recent case of *Ukeje v Ukeje*,²⁰⁵ the Supreme Court also determined the rights of the female dependants to land inheritance of a deceased man who died intestate. In *Ukeje's* case, Lazarus Ukeje, a resident of Lagos state and a native of Umuahia of Imo State, died intestate. He had real property in Lagos State, where he resided for most of his life. The first Appellant married the deceased on the 13th of December 1956, and they had four children, one of whom was the respondent. After the death of Lazarus Ukeje, the first and second appellants (stepmother of the plaintiff/respondent and half-brother of the plaintiff/respondent) obtained letters of administration for and over the deceased's estate, excluding the respondent as a daughter entitled to a claim. The respondent then filed a claim in court, asserting her rights to a share in her father's estate.²⁰⁶ The court of first instance sitting in Lagos ruled in favour of the respondent, and declared that she was entitled to share in the deceased's property. As a result of this ruling, the court ordered that the administration of late Ukeje's estate be suspended until new letters of administration were obtained by the deceased's children, including the respondent. Unsatisfied with the High Court's decision, the appellants filed appeals to both the Court of Appeal and the Supreme Court. In response, the apex courts upheld the decision of the court of the first instance and held that the practice of the Igbo customary law, which excluded women from inheriting their father's estate, was null and void. The judges further stated that the practice was repugnant to natural justice and contradicted Section 42 of the 1999 Constitution of the Federal Republic of Nigeria, which prohibits discrimination.

*Anekwe v Nweke*²⁰⁷ is another significant case on female land inheritance the Supreme Court decided around the same time as *Ukeje*. In this case, the court addressed the customary law of the Akwa²⁰⁸ people, which prohibited a married woman without a male child from inheriting

²⁰⁴ Nzekwu v Nzekwu (1989) 2 NWLR, pt. 104, 404.

²⁰⁵ Ukeje v Ukeje (2014) 11 NWLR pt. 1418, p.386.

²⁰⁶ Princewill C. Amadi, "Examining the Effect of the Supreme Court Decision in *Ukeje v Ukeje* (2014) 11 NWLR (PT.1418) 384 on Ikwerre Native Law and Custom," *Research Gate*, November 1, 2021, [8.https://princewillamadi.wordpress.com/2021/08/27/examining-the-effect-of-the-supreme-court-decision-in-okeje-v-ukeje-on-ikwerre-native-law-and-custom/](https://princewillamadi.wordpress.com/2021/08/27/examining-the-effect-of-the-supreme-court-decision-in-okeje-v-ukeje-on-ikwerre-native-law-and-custom/)

²⁰⁷ Onyibor Anekwe Chinweze v Maria Nweke, (2014) JELR 54573 (SC).

²⁰⁸ Awka is the capital city of Anambra State, Nigeria. Awka comprises seven Indigenous groups sharing common blood lineage.

her husband's property. The dispute involved a piece of land in Amikwo Village in Awka, Anambra State. The appellants and the respondent both claimed it and sought a declaration of statutory right of occupancy to the land from the court.

The respondent's husband was the youngest son and the half-brother of the appellant's father. The husband and father owned two bungalows on the same piece of land. The respondent argued that after her husband died and was buried, she continued to live on the portion of land shared between her husband and the appellant's father. However, the appellant's father asked her to vacate the house she once shared with her husband because she had no male child. At the trial court, the judge ruled in favour of the respondent, granting her reliefs sought and an injunction restraining the appellants from further trespass on the piece of land. On appeal, the appellants contended that the land in dispute was never partitioned between the appellant's father and the respondent's husband. Rather by the nature of the law and custom of the Awka people, the land was supposed to be passed from generations through the male line and the same was to be inherited by the first appellant, not the respondent.

The Supreme Court upheld the decisions of the trial court and the Court of Appeal. It went further to declare that the custom of the Awka people, which denies a married woman without a male child the right to inherit the landed property of her late husband, is barbaric and repugnant to equity, natural justice, and good conscience.²⁰⁹

Despite the favorable rulings in the examined cases, the discriminatory practices against women regarding land inheritance persist due to the common customary practices of the people and their shared beliefs. The Supreme Court's decision in Ukeje's case, while providing a glimmer of hope to Igbo women, fell short of properly engaging with Igbo customary law. The court failed to address the socio-cultural context of the primogeniture rule of inheritance in the Igbo society, based on the best interests of the dependant's principle, and did not directly invalidate the rule. As a result, despite various court decisions condemning the practice of excluding women from inheriting property, their implementation in practice is still challenging. Simply condemning such practices in theory without examining their socio-economic origins and the rationales behind their continued practice was insufficient to address the social problem. Courts need to formulate a more robust, balanced, and effective response.

3.4 ECONOMIC ABUSE IN DIVESTING OF PROPERTY IN DIVORCE

To highlight the oppressive effects discriminatory laws and practices can have on the rights of women in the Igbo society in Nigeria, there is a need to assess how economic abuse can occur on the redistribution of property following the dissolution of a marriage in Nigeria. This section of the thesis examines the legal provisions of property division under the Matrimonial Causes Act²¹⁰ in Nigeria and its complementary provisions under the customary law rules, given their

²⁰⁹ Edeh Samuel Chukwuemeka, "Anekwe v Nweke: Facts, Issues and Decision of the Court", *Bscholarly* November 15, 2019, <https://bscholarly.com/aneke-v-nweke/>.

²¹⁰ Matrimonial Causes (Amendment) Act, 1975.

relevance in Igbo society. This assessment is necessary to underscore the impact of inequitable legal and unjust customary norms in divorce property settlements, particularly on women's economic freedom after marriage. The economic welfare of women after a divorce is quite uncertain because of the lax enforcement measures for divorce settlement decisions. That reality can influence women's decisions to remain in abusive marriages.

Nigeria has three recognized kinds of marriage: marriage under the Marriage Act of Nigeria,²¹¹ Islamic Marriage, and Traditional/Customary Law marriage. A marriage under the Act is a marriage that adheres to the provisions of the Marriage Act, including giving notice of the impending marriage to the Registrar of Marriage in the Local Government where the marriage will be conducted. On the other hand, a traditional/customary marriage is a marriage ceremony performed under the customs of the bride and groom's families. Typically, it involves the payment of a bride's price and giving gifts to the bride's family.²¹² Also recognized is the Islamic marriage ceremony. An Islamic marriage is one conducted in accordance with the requirements of Islamic rites.

Most marriages in Nigeria involve fulfilling the customary or Islamic marriage requirements and performing the requisite requirements for the Marriage Act for legal recognition. The result is that in most divorce cases multiple provisions and precedents affect determinations of property rights and inheritance.

Divorce remains an uncommon occurrence in local communities in Nigeria. The Igbo people perceive it as contrary to their social arrangements because of the core importance placed on preserving family arrangements. However, with the influence of Westernization and changing family structures, it is no longer abhorred. While divorce may still be frowned upon, it is, in some cases, encouraged by families, especially where domestic abuse is alleged. Despite this shift, the inherent inequalities between the perceived roles of men and women persist and influence how property acquired during a marriage is settled.

For marriages under the Marriage Act, the Matrimonial Causes Act (MCA) makes provision for the settlement of property in divorce.²¹³ Section 72(1) of the MCA grants the High Court jurisdiction in matrimonial disputes and provides that:

The court may, in proceedings under this Act by order, require the parties to a marriage, or either of them, to make for the benefit of all or any of the parties to, and the children of the marriage, such settlement of property to which the parties are, or either of them is entitled (whether in possession or reversion) as the courts consider just and equitable.

The same Section goes further and provides that:

²¹¹ The Marriage Act Cap M6, Laws of the Federation of Nigeria 2004

²¹² Omolade Animashaun, "Types of Marriages in Nigeria," *Law Care Nigeria*, June 7, 2020, <https://lawcarenigeria.com/types-of-marriage-in-nigeria/>.

²¹³ Matrimonial Causes Act, Section 72.

The Court may also, in proceedings under the Act, make such order as the Court considers just and equitable with respect to the application for the benefit of all or any of the parties to, and the children of the marriage of the whole or in part of the property dealt with by ante-nuptial or post-nuptial settlements on the parties of the marriage, or either of them.

These highlighted provisions should be read into the dependent provisions in Section 73 of the same Act.²¹⁴ Reading both sections together, it becomes clear that the High Court can only make an order in relation to the settlement and not the redistribution of the property in marriage, except in cases involving ante-nuptial or post-nuptial agreements. In essence, the “settlement of property” provided in sections 72 and 73 applies to only the right to use and enjoy the property subject to the occurrence of an event. It does not involve a transfer of ownership of the property from one spouse to the other except in cases where the court makes an order for sale to discharge a maintenance order.²¹⁵ The provisions of sections 72 and 73 of the MCA share some similarities with the Igbo custom on land inheritance rights, whereby a woman receives only possessory rights to the landed property for the use and maintenance of herself and her children after her marriage ends, especially in cases of the husband’s death.

Although section 72 allows the court to make pronouncements on property settlements in ways it considers just and equitable, there is little flexibility on what this provision has come to mean over the years in Nigerian jurisprudence. Judges have consistently adopted a strict property rights approach when deciding property settlements between spouses in divorce cases. In essence, to determine who gets what, the spouse whose name appears in the title document is presumed the owner unless the other spouse can provide documentary evidence of co-ownership or tangible contribution to the property.

In several Nigerian cases, the courts have consistently upheld the principle that a spouse’s lack of financial contribution to the acquisition of property may result in the failure of their claim for an ownership interest in that property in divorce cases. For example, in the case of *Essien v Essien*,²¹⁶ the court emphasized the need for evidence of direct financial contribution to purchase a marital home or repay a mortgage before joint ownership can be proved. In *Essien*, the property in dispute was registered in the sole name of the husband. The wife’s divorce petition ran concurrently with her husband’s suit and was concluded earlier than the husband’s. The court declared that the parties were joint owners of the property in dispute. However, when the wife sought to introduce this judgment in her husband’s suit, claiming her contribution through her salary and her father’s lodging assistance during the building process, the trial court disregarded

²¹⁴ Section 73 of the MCA gives a general description of the kinds of orders the Court can make in exercising its powers under section 72. These includes an order that a lump sum or a weekly, monthly, yearly, or periodic sum be paid, an order that a lump sum or a weekly, monthly, yearly or periodic sum be secured, an order that payment of maintenance in respect of a child be made to such persons or public officer, or other order as the court specifies etc.

²¹⁵ Chinedu Justin Efe and Ogenerioborue Esther Eberechi, “Property Rights of Nigerian Women at Divorce: A Case for a Redistribution Order,” *Potchefstroom Electron Law Journal* 23, no. 1 (2020): 6, <https://doi.org/10.17159/1727-3781/2020/v23i0a5306>.

²¹⁶ *Essien v Essien* (2009), 9 NWLR, pt. 1146, 306.

the divorce judgment and held that the husband was the sole owner of the property. The Court of Appeal also upheld the decision of the trial court. It stated that the requirement for joint ownership could only be inferred if there is evidence of direct financial contribution to the purchase price of the marital home.²¹⁷

Similarly, in the case of *Sodipe v Sodipe*,²¹⁸ the court upheld the same position. In this case, the petitioner claimed joint ownership of a property acquired during a 43-year-long marriage, but there was no evidence of direct financial contribution to the property's acquisition. In the absence of this, the court awarded a lump sum of N200,000 to the petitioner, even though the property was valued at N10,000,000 (ten million naira).

Although the courts have consistently adopted a strict property rights approach in determining divorce property settlements, the Married Women Property Act²¹⁹ (MWPA) aims to establish and acknowledge the separate ownership of property by married women. According to section 1 of the Act, a "married woman is capable of holding property and contracting for the acquisition of property as a feme sole." Essentially, this means that the MWPA, allows any personal or real property acquired by a woman before and after her marriage to be treated as her separate property.

In supporting this provision, section 17 of the same Act provides that disputes between a husband and wife regarding property ownership and settlements should be decided in a summary way. Either spouse can commence an action in court to determine such right. Regardless of MWPA's protection of women's property rights, there is still the tendency for discriminatory gender roles to influence court judgments in property settlement decisions. This is evident in the prevailing perception of gender roles between men and women in the present Igbo society. Highlighting the role of men as the breadwinners sustains the very same social arrangements that prioritize men's access to employment and relegate women to unpaid welfare responsibilities, particularly in the family context.

This labour division between genders might not be the reality for many women. As Zimmerman and Candace pointed out, the concept of doing gender reflects that we are not simply born into a sex or gender identity or merely functioning in a gender role; rather, it is a routine, methodological, and recurring accomplishment.²²⁰ Peculiarities of gender roles can be groomed through social interactions, reinforcing the prescribed notions of gender essentialism. These interactions do not reflect natural differences between women and men but produce differences.²²¹

²¹⁷ Winifred Idiaru, "Rights of A Legal Wife to Family Properties in Divorce," *Resolution Law Firm*, June 7, 2021, <https://www.resolutionlawng.com/rights-of-a-legal-wife-to-family-properties-in-divorce/>.

²¹⁸ *Sodipe v Sodipe* (1990) 5, WRN 98.

²¹⁹ Married Women's Property Act, 1958.

²²⁰ Don H Zimmerman & Candace West, "Doing Gender," *Gender and Society* 1, no. 2 (1987): 126, <https://doi.org/10.1177/0891243287001002002>.

²²¹ Lynn Prince Cooke, "Doing Gender in Context: Household Bargaining and Risk of Divorce in Germany and the United States," *American Journal of Sociology* 112, no. 2 (2006): 472, <https://doi.org/10.1086/506417>.

In many cultural societies, gender hierarchies are prevalent and reinforce social and institutional barriers that hinder women's access to economic development. Women's continued responsibility for the domestic sphere prevents them from attaining equal opportunities with men.²²² The domestic role of women in family settings limits their opportunities for economic advancement. Consequently, they are more likely remain in a dependent position with no rights to marital property in the event of a marriage dissolution.

The challenge of property inheritance rights for Igbo women begins even before they consider divorce, as most women in local communities are not entitled to own and make independent decisions over land and property due to traditional land inheritance rights. For many women, the common conception that prevents them from leaving bad situations is that "once you get out, you lose everything." Courts have consistently reinforced this belief by failing to acknowledge that the labour requirements in maintaining the domestic welfare in a home should be considered a substantial contribution to the acquisition of family property. Maintaining these regressive standards when settling marital property often denies women an equitable share determining in marital property settlements. This will occur if a strict interpretation of the provisions of section 72 and section 73 of the MCA is always applied. This practice goes against the anti-discriminatory provisions of the Constitution of Nigeria and some of the international and regional treaties on equality that Nigeria has ratified.

For example, the CEDAW guarantees women's rights to property and enjoins State parties that are signatories to it to:

Take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and to ensure, based on equality of men and women, the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property.²²³

Similarly, the African Commission on Human and People's Rights (ACHPR) adopted a resolution urging State parties to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) to enact legislation to ensure that women and men enjoy the same rights in cases of separation, divorce, or annulment of marriage. The Maputo Protocol provides that women and men have "the right to an equitable sharing of joint property deriving from the marriage" in circumstances of separation, divorce, or annulment of marriage.²²⁴

In response to these provisions, some African countries have taken practical steps to remove restrictions on African women's ability to receive an equitable share in marital property on divorce through judicial decisions. This has been achieved by adopting a liberal interpretation

²²² Cooke, "Doing Gender in Context," 475.

²²³ CEDAW, art. 16.

²²⁴ Human Rights Committee, "General Comments No. 6 on the *Protocol to the African Charter on the Rights of Women in Africa* (Maputo Protocol): The Right to Property During Separation, Divorce, or Annulment of Marriage under Article 7(d)," ACHPR/Res.401 (March 4, 2020).

of what constitutes a substantial contribution to acquiring marital property. While provisions similar to section 72 and 73 of the MCA exist in a handful of laws in some African countries on matrimonial causes, progressive judicial interpretation has been used to balance these laws with the demands of equality. For example, in Kenya, section 6(7) of the Matrimonial Property Act of 2013 provides that matrimonial property vests in spouses according to the contribution of either spouse towards the acquisition.²²⁵ However, through interpretation mechanisms applied by some judges, Kenyan courts have been more equitable in determining the rights of Kenyan women upon divorce, unlike their Nigerian counterparts.

MW v AN is a significant case that highlights this approach. In this case, the parties married in 1990, separated in 2003, and divorced in 2011.²²⁶ The dispute centered on a house in Nakuru registered under the sole name of the male spouse (the defendant). However, the plaintiff argued that she had taken substantial loans to finance the land purchase and the house's construction. She also established that she had maintained full-time employment during the marriage and was their children's primary caregiver and homemaker. Conversely, the defendant claimed that not only had he bought the plot on his own, but he had also been providing financial contributions towards the upkeep of his wife. The Kenyan court, recognizing the importance of the care-work and housework performed by a female spouse (the plaintiff) held that she was entitled to an equal share of the marital property upon the dissolution of the marriage.²²⁷

In the case of *Echaria v Echaria*,²²⁸ the High Court defined “contribution” when considering rights to marital property to include tangible financial contribution and the unseen contribution of housework and care-work. The court went further to state that where there was a substantial but unascertainable contribution by both parties, a default rule of equal division would apply.²²⁹ The view by the Kenyan courts on what “contribution” should mean when determining who gets what when settling property in divorce proceedings is particularly important to this thesis because for far too long, the domestic contribution of women in the family context has been unseen. In many local communities, women’s roles are often confined to the domestic sphere, leaving them with little or no opportunities to earn a living, and their contributions to homemaking are not considered significant financial contributions, especially considering gender expectations. Women often lack decent earning opportunities because of compounding factors, including cultural norms and discriminatory practices that limit their access to education, employment, and ownership of assets. Recognizing and valuing women’s domestic contributions to the division of marital property during divorce proceedings can be a crucial step toward addressing the economic violence experienced by some Igbo women in local communities. A purposeful interpretation of

²²⁵ Matrimonial Property Act No. 49, 2013.

²²⁶ *MW v AN* (2021) eKLR. Matrimonial Cause Number 20 of 2016.

²²⁷ Gautam Bhatia, “Equality, Family and Unpaid Domestic Work: Kenyan High Court Ruling,” *The Elephant*, October 1, 2021, <https://www.theelephant.info/analysis/2021/10/01/equality-family-and-unpaid-domestic-work-kenyan-high-court-ruling/>.

²²⁸ *Peter Mbru Echaria v Priscilla Njeri Echaria* (2007) eKLR

²²⁹ Bhatia, “Equality.”

the provisions of the MCA can begin this crucial step, and by acknowledging domestic contributions as significant financial considerations, the Court can ensure a fair distribution of assets that provides women a chance to achieve economic independence even when a marriage ends.

There have been some progressive steps towards fairness in the Nigerian legal sphere. However, there is still a lack of uniformity in how the high courts and the customary courts determine whether the unpaid labour of a woman in homemaking should be considered a sufficient contribution to the acquisition of marital property upon divorce.

In the case of *Okere v Akaluka*,²³⁰ the court held that it would be unconscionable to deprive a woman and her children of the right to a property to which she contributed substantially regarding its acquisition and development. The court also emphasized that the indirect contribution of wives to the marital property should grant them a beneficial entitlement to the property on the basis that "...it was the performance of their functions as wives that enabled their husbands to perform theirs."²³¹

The situation is no different when the marriage is conducted solely under customary law. However, the established practice in many communities is that women have only possessory rights to property under customary law. After divorce, their chances of inheriting any real property depend on their husbands' benevolence or their sons' considerations, if they have any. This practice reflects the belief that upon the payment of the bride price, wives become possessions of their husbands, implying that any property a woman claims to have acquired is, in a strict sense, the husband's property by extension. Therefore, it is quite challenging to establish that property belongs to the woman except for any properties that are registered in her name.²³²

For all the legal frameworks represented on paper, the combination of customary practices and unclear laws may result in an unequal and unfair distribution of property upon divorce and often make it challenging for women to provide evidence to prove any beneficial interest that may accrue to them.²³³ Overall, there is a need to critically examine the criteria through which women's contribution to the acquisition of marital property is assessed, especially in cases of customary divorce.

²³⁰ Nicholas Okere v Theresa Akaluka (2014) LCN/7534 CA

²³¹ Efe and Eberechi, "Property Rights," 12.

²³² Juliana Nnoko-Mewanu, "Once You Get Out, You Lose Everything; Women and Matrimonial Property Rights in Kenya," *Human Rights Watch*, June 25, 2020, <https://www.hrw.org/report/2020/06/25/once-you-get-out-you-lose-everything/women-and-matrimonial-property-rights-kenya>.

²³³ Maurice Izunwa, "A Critique of Certain Aspects of the Grounds, Procedure and Reliefs Attaching to Customary Divorce Law in Southern Nigeria," *Journal of Law and Conflict Resolution* 7, no. 5 (2015): 35, <https://doi.org/10.5897/JLCR2013.0162>.

3.5 SEXUAL VIOLENCE AS IT RELATES TO ATONEMENT PRACTICES FOR ADULTERY IN IGBO SOCIETIES

Adultery is defined as voluntary sexual intercourse between a married person and a person who is not their spouse.²³⁴ In certain African societies, including Igbo communities, adultery is met with severe punishment due to its moral significance. In these societies, it is considered a breach of social order and traditional beliefs, as it is believed to lead to the degradation of family life and societal values.²³⁵ Adultery is particularly condemned for women as it falls short of the cultural expectations of women chastity and seen as a threat to established cultural family values, ultimately destroying society.²³⁶

In Nigeria, the treatment of adultery varies among the regions. However, under the Criminal Code, which is applicable in most of the eastern states in Nigeria, adultery is not considered a criminal offence. In the northern states the Penal Code criminalizes adultery, and it is punishable by fines and imprisonment.²³⁷ Despite these differences, adultery is a ground for divorce under the Matrimonial Causes Act, even when it is not a criminal offence.²³⁸

The focus of this section of the thesis is to explore how traditional justice systems, specifically the process of ritual reparations for adultery, puts women at risk of sexual violence in Igbo communities. This examination highlights the challenges and risks women encounter when dealing with adultery-related issues in traditional justice systems.

3.5.1 Adultery in the Igbo Society

In Igbo culture, certain acts and omissions are taboos/abominations, known as *Nsoala* or *Aru*²³⁹ in the Igbo language. These taboos and abominations are considered important for social control, and they play a significant role in upholding the moral standards in Igbo society. Though unwritten, they are passed orally from one generation to another as a code of moral conduct and are preserved through Indigenous knowledge systems.²⁴⁰ The common belief is that an infraction

²³⁴ Merriam-Webster, s.v. “Adultery,” accessed January 13, 2024, <https://www.merriam-webster.com/dictionary/adultery>.

²³⁵ Albert Okorie, Christopher Ostar & Chikwado Ezugworie, “An Assessment of the Traditional Penal Code for Adultery and the Operations of Women’s Rights Instrument Among the Igbos in Southeastern Nigeria,” *International Journal of Political Science* 6, no. 1 (2020): 34, <https://doi.org/10.20431/2454-9452.0604004>.

²³⁶ Mathias Olufemi and Dada Ojo, “Magun: The Traditional Juju for the Punishment of Adultery Among Yoruba Natives,” *Anthropology* 3, no. 13 (2013): 133.

²³⁷ Under the Penal Code (Northern States) Federal Provisions Act (No. 25 of 1960), Nine states including Zamfara, Kano, Sokoto, Katsina, Bauchi, Borno, Jigawa, Kebbi, and Yobe have instituted Sharia Law and as a result, convictions are being handed out in the Sharia courts for adultery.

²³⁸ UNGA, *Report of the Working Group on Discrimination against Women in Law and in Practice*, UNGAOR, 29th Sess, Supp No 3, UN Doc A/HRC/29/40 (2015).

²³⁹ Nsoala typically means a sin against the land while Aru translates to abomination.

²⁴⁰ Emmanuel Abeku Essel, “The Role of Taboos in African Governance Systems,” *Polgari Szemle Journal* 14, no. 6 (2018): 372, <https://doi.org/10.24307/psz.2018.1229>.

of taboos and abominations invokes the wrath of the gods of the land, which among the Igbos is referred to as the earth goddess.

The commission of taboos and abominations is perceived in the Igbo society as a “disruptive factor in the fabric of their society, a kink in the normal web of relationships between beings or an obstruction in the flow of the life forces that sustain social order.”²⁴¹ Consequently, any deliberate or unconscious harm to the fabric of society constitutes a crime. The principles of taboos, crimes, and punishment play a fundamental role in the social order of the society. Due to the communalism practiced in Indigenous Igbo society, a breach of these principles affects the entire community’s well-being. For the Igbo community:

The guilt of one person involves his entire household, including his animals and property. The pollution of the individual is corporately the pollution of those related to him, whether they are human beings, animals, or material goods.²⁴²

Adultery is strictly prohibited in Igbo families and is regarded as a crime against the community. When a woman commits adultery, especially when the customary marriage rites have been performed, it attracts serious consequences. Typical consequences may include payment of fines, restricting/denying the woman access to the children, restriction from using family property, including jointly acquired ones, and, in extreme situations, the performance of ritual rites that are expected to cleanse the woman and the community of the crime that has been committed. The punishments for adultery can vary depending on the cultural practices and the metaphysical beliefs attributed to that community.

For example, in the Ezike community of Enugu State, Nigeria, it is believed that the punishment for adultery is severe, even beyond the scope of what the husband envisages. Punishment of the adulteress ranges from being inflicted with madness to the death of herself or her children. Furthermore, it is also perceived as a crime for a married woman in the Ezike community to conceal any amorous advances made by other men from her husband, given that once a woman’s bride price is paid, her relationship with other men is highly restricted. Traditional rulers of Ezike and family heads emphasize that “if an adulterous woman is caught, she is expected to perform certain ceremonies to appease the land; otherwise, she will be affected with madness or death.”²⁴³

As a result of the autonomous leadership systems in Igbo society, there are many dynamics related to the offence of adultery. The offence is gendered in the Igbo society and a commonality among most Igbo communities is that adultery is a crime for which women can be severely

²⁴¹ Sonia Kruks, “Review of *African Philosophy: An Introduction to the Main Philosophical Trends in Contemporary Africa* by E. A. Ruch and K. C. Anyanwu (Rome: Catholic Book Agency, 1981, 412),” *Africa* 52, no. 4 (1982): 103, <https://doi.org/10.2307/1160107>.

²⁴² John S Mbiti, *African Religions & Philosophy*, (Oxford; Portsmouth, N.H: Heinemann, 1990), 36.

²⁴³ Chuma Austin, “Enugu-Ezike Where Married Women Run Mad for Committing Adultery,” *News Echo*, March 29, 2021, <https://www.newsecho.com.ng/wp-content/uploads/2021/03/MARCH-29-2021.pdf>.

punished, save for some exceptions. A woman commits adultery during her husband's lifetime when she engages in an amorous relationship with another man. She can also commit adultery after the death of her husband when she engages in an amorous relationship with another man before the performance of all burial rites for her deceased husband and the completion of the mourning period, which discharges her obligations to the marriage. By contrast, adultery by a man is only regarded as a crime when he has a sexual relationship with the wife of his fellow kinsman. This is because a man can be with as many women as he wants if he can care for them. Polygamy is a man's right in most Indigenous Igbo societies; it is supported not only by the patriarchal norms that entrench it but also by the forms of marriage practiced in the community.

If a person violates any form of the social order meant to maintain peace and foster unity within the community, they are said to have defiled the land. For women who commit adultery, their acts are seen as a pollution that requires some form of ritual cleansing. The process of removing such pollution in most Igbo societies is regarded as "*Ikpu Alu*" which translates as "dragging away the pollution." There are specific steps a woman who commits adultery must follow to obtain forgiveness from her community. These steps include confession, atonement, and reconciliation.²⁴⁴

The first step, confession (*Isa Ifi*), begins when the woman explicitly acknowledges her transgression, which in this case, is the act of adultery. The confession requires the penitent (the woman), a recipient (the man involved in the adultery), and, in some cases, a competent authority who listens to the confession. As a common practice in Igbo cultural societies, the confession's authenticity and effectiveness depend on the words spoken and heard during the dialogue. This dialogue between the penitent and the recipient is a critical component of the confession process where "both the speaker and the hearer embody a circle of functions whether theistically, magically, or both to consume the sin confessed".²⁴⁵ The acceptance of the confession and its requirements are determined by the rules of the woman's marital family, specifically, her husband's family. Although this process may vary based on community practices and norms, a confession is never private.

In Nsukka culture, the adulteress confesses openly, admitting that she has committed adultery, and mentions her sexual partners. If there are multiple partners, she calls them by name or symbolically indicates their plurality by raising some sand from the ground. During this process, the husband, who is considered the victim, is forbidden to be present during the confession.²⁴⁶ Instead, his female relative attends the confession and relays to him the names of the men who had

²⁴⁴ Austin, "Enugu-Ezike."

²⁴⁵ Christian O. Ele, "The Pastoral Implications of Confession in African Traditional Religion: The Case of Adultery in Nsukka Culture," *International Journal of Humanities and Social Science* 7, no. 6 (2017): 149.

²⁴⁶ Nsukka is a town and a Local Government Area in Enugu State, Nigeria. It shares a common border as a town with Edem, Opi, Ede-Oballa and Obimo. The People of Nsukka speak central Igbo and Nsukka dialect, a sub-dialect of the Igbo language.

sexual relationships with his wife. Omission of any names, willfully or unintentionally, can render the whole exercise null and void.²⁴⁷

Some communities are more lenient with the confession process by limiting the category of persons who can witness it. For example, in the Enugu-Ezike community, when a woman commits adultery, regardless of the identity of the man she committed it with, she must make her confessions before the *Umuada* (women of the community) while completely naked.²⁴⁸ During this confession, her hair, pubic hair, eyebrows, and armpits are shaved by the “*Umuada*”, symbolizing the severance of all ties between the woman and the men she had amorous relationships with. However, to protect her husband’s honour, she is not required to mention all the names of the men she slept with before the *Umuada*. Instead, she will be asked to smash a stone on the floor, signifying that there are too many for her to remember.²⁴⁹

A similar practice is followed in the Ezza community of Ebonyi State.²⁵⁰ According to Nwangama,²⁵¹ who based his report on his interview with an elderly man in the Ezza community, if a woman commits adultery in Ezza, she must confess her sins publicly by naming her lover or lovers. If there are too many to remember, she will name those she recollects and cast a few pebbles to signify the unnamed men. If he is uncircumcised, the woman's lover will provide her with a kid (a young goat) that she will cuddle on her lap for some time. Afterward, she will invoke and call upon the earth goddess and other spiritual beings, offering them the kid as her penance for the adultery she committed. After this sacrifice, the eldest man of the family will get *Akpunto* (silk cotton) and some leaves, squeeze them in a bowl of water, and sprinkle the water on the offenders. After the sacrifice, the woman and her lover will ask the husband for forgiveness and seek acceptance of the atonement performed in front of the elders.

Among the Imo people of Njaba, when a woman commits adultery, she will appear almost naked in public with family members drawn from her biological family. Her husband, his relatives, and the oldest family members are called the *Nze n'Ozo*. To begin her confession, the woman is asked to confess the names of every man she had relationships with during and after the marriage. If she forgets to mention any of the names or mentions too many names, she will be told to take up some sand and throw it into the air to signify the omitted names. After the confession, the elders of her family will provide some leaves, which will be ground, and she will be made to eat the

²⁴⁷ Ele, “Pastoral Implications,” 146.

²⁴⁸ The Enugu-Ezike community is a large town occupying the whole land of Igbo Eze North. The people of Enugu-Ezike are Igbos by ethnicity; it also has a strong gerontocratic government that is led by an *Onyishi*, who is the eldest male in the community.

²⁴⁹ Ele, “Pastoral Implications,” 150.

²⁵⁰ Ezza is an Igbo sub-group in Southeastern Nigeria. As a community, they are collectively referred to by the singular name “Ezza” in reference to their progenitor. They speak Ebonyi language.

²⁵¹ Nwangama Edwin Ukpabi, “The Concept of Sin and Atonement in Igbo Traditional Religion: A Case Study of Ezza Community in Ebonyi State” (MSc. Thesis, University of Nigeria, 2018), 28.

grinds alongside her family members, a process referred to as “*Igba Oriko*”.²⁵² Once this process is completed, the woman and her husband are considered free of any repercussions from her infidelity.

While confession is the preparatory exercise for the ritual process of atonement before reconciliation, it is not always voluntary. In some communities, it is believed that even though the husband of an adulterous woman or his relatives are unaware of her escapades with other men outside the marriage, she will be exposed. In essence, whether the marriage between the man and the woman is still subsisting, if adultery is alleged during the marriage, a cleansing ritual is still required.

For the Ogwashi-uku people of Delta State, the ritual process starts with the woman severing her relationship with her children born to the man.²⁵³ She would not cook, eat, or communicate with them until she purifies herself. Accompanied by the *Umu ada*, the woman must go before the community shrine where a kola nut is broken, marking the beginning of the ritual purification exercise. In addition to this, a fee is expected to be paid to the shrine for each name mentioned. Upon completion of this stage, the *Umu ada* reports to the *Diokpa*²⁵⁴ about the proceedings, especially the amount that was paid, representing the number of men she slept with. Afterward, the woman visits the *Iyemedi*²⁵⁵ where certain rites are performed, and she is made to pay a separate fee. Then the wife would visit the community men who finally decide the punitive measures that should be taken against her. The men she mentioned whom she committed the acts with are not always spared. If the men who slept with the woman are relatives of the husband, they are fined eight he-goats.²⁵⁶

The Igbo people view the observance of the purification rites followed by the reconciliation process as a means to secure a harmonious community. The reconciliation process is the final stage a woman goes through before she is absolved of all offences. It typically signifies her reacceptance into the community and her reacceptance into the family. The purification rites are seen as removing sin, which brings abomination, and restoring life by re-establishing links with the ancestors, which is believed to guarantee the source and fullness of life.

However, despite the supposed spiritual benefits for the community, the practice is at a crossroads with women’s rights. The continued existence of these practices alongside the traditional systems upholding them means that legal attempts to create laws to elevate human rights

²⁵² This translates into reconciliation. In this context, it connotes a meaning of ritual of purification and peace. In this sense, reconciliation can be seen as a natural spiritual cord that ties people to themselves.

²⁵³ Ogwashi Uku is an Igbo town in Delta State, Nigeria. It is one of the Anioma region of Delta State and its native are the Enuani people.

²⁵⁴ Diokpa is an Igbo term popularly used among the Igbos found in the South-South area of Nigeria; it literally means the oldest man in the community.

²⁵⁵ Iyemedi is a group of women that are married to the men from a particular clan.

²⁵⁶ Charles Adingupu, “ISHI: The Pain of an Adulterous Woman in Ogwashi Uku,” *Vanguard*, August 22, 2015, <https://www.vanguardngr.com/2015/08/ishi-the-pain-of-an-adulterous-woman-in-ogwashi-uku/>.

practices above cultural and traditional practices have made little or no progress. The treatment of women in these communities when accused of adultery exposes them to situations that violate their right to personal integrity and security and can even threaten their lives.²⁵⁷ Furthermore, the reconciliation process is not guaranteed and is not always conducted after the confession and ritual. In addition, if the marriage ends at the husband's request and the bride price paid is returned, the woman is at risk of losing any jointly acquired property.

The deeply ingrained beliefs surrounding these atonement practices pose a significant challenge to finding a solution through legal means that can effectively balance the concerns of a community fearing consequences if adultery goes unpunished and the human rights of the women involved. Will the courts ignore these practices, hoping that implementing laws will provide the much-needed safety nets for women? In seeking answers to these questions, it becomes evident that law alone is limited in its ability to ameliorate the challenges women face, especially in traditional cultural societies. While having a legal and policy framework for protecting women's human rights is important, it is not sufficient. Women need to be empowered to claim and exercise their legally recognized rights, and men must be informed and accepting of those rights regardless of social constructs. Amartya Sen makes an important distinction between capabilities and functioning and sheds light on the difference between having a right and being able to enforce it.²⁵⁸ Women's ability to act and voice their rights, as well as turn these capabilities into effective actions, depend on the strength of social structures that support them. Inequalities are produced and sustained by social arrangements and processes and the deliberate actions of individuals and collectives. Changing the dynamics of perceived rights will require changes to current structures, cultural attitudes, and ways of doing the "usual business" of women's human rights. Merely relying on laws alone in changing this narrative, particularly in areas that are of a private nature, has not and cannot produce the real progress needed to bridge the gap between women's rights and their lived realities.

3.6 CONCLUSION

The above considerations illustrate how relations in traditional Igbo society have played a determinative role in shaping women's rights, particularly within cultural institutions. However, discriminatory cultural practices in private spaces where women's rights are most affected weaken and undermine the effectiveness of legal guarantees for women's rights. Consequently, alternative avenues must be explored, especially in communities where customs take precedence over formal laws, and it is a struggle to implement legal rights because cultural norms have greater influence.

²⁵⁷ African Charter, art. 4 and art. 6. Both Articles provide that human beings are inviolable, and every human being is entitled to respect for his life and the integrity of his person.

²⁵⁸ Amartya Sen, "Rights and Capabilities" in *Resources, Values, and Development*, 2nd Ed (Cambridge: Harvard University Press, 1984): 307-324, Ingrid Robeyns & Morten Fibieger Byskov, "The Capability Approach" in Edward N Zalta, ed, *Stanford Encyclopedia of Philosophy*, winter 2021 ed (Metaphysics Research Lab, Stanford University, 2021).

The purpose of drawing attention to the specific areas in this chapter is not to underestimate the potential usefulness of laws in curbing inequality or to understate the judicial efforts made to solve women's problems. Rather, the aim is to emphasize the determinative roles and participatory roles held by custodians of culture in perpetuating the practices that limit women. Additionally, the life-experience of women in all these areas demonstrate that securing the rights that protect the socio-economic interests of women is impossible when operating outside the local political structures in their communities.

CHAPTER FOUR

RECOMMENDATIONS TO SUPPORT TRANSFORMATION

*The State is both too strong and too weak in relation to the protective enterprise-it is too strong in the crucial respect that if it is the source of gross violations, it becomes exceedingly difficult to organize effective opposition; it is too weak in the equally crucial respect that, even when disposed to implement human rights standards internally, it can only rarely and marginally overcome contrary cultural practices, especially if these are deeply ingrained and widely dispersed.*²⁵⁹

4.0 Introduction

It is increasingly evident that laws are not ends in themselves, especially with the disparity between international norms in theory and their practical application, particularly concerning women's experiences in culturally regulated societies. As a result, there is a need to establish effective strategies for protecting women's human rights. Mere proclamation of these rights is insufficient, especially when considering the disparities reviewed in Chapter Three.

Given the inherently cultural and communitarian nature of some of the key issues affecting women in Indigenous Igbo communities, finding a productive resolution that reconciles the validation of distinct cultural norms with human rights norms becomes necessary. To achieve this, I propose an alternative approach to achieve fuller acceptance of laws safeguarding women's rights at the grassroots level. This chapter explores three key strategies: (a) Reinterpretation of cultural norms, (b) Dialogue among community members, and (c) Cultural competency training for professionals dealing with victims of gender discrimination and sexual violence. These recommendations focus on how accepted Indigenous institutions and norms can be utilized to create culturally sensitive approaches that will support the implementation of women's human rights, especially at the grassroots level in communities.

4.1 Reinterpreting Cultural Norms: Giving Old Ways New Forms

In Igbo culture, there is a strong emphasis on preserving cultural traditions, and many customs and practices have remained unchanged despite the influence of Western culture. For instance, traditional marriage and wine-carrying ceremonies (*Igba Nkwu*) continue in practice to date.²⁶⁰ The significance of the payment of the bride price as a sign of proper marriage rites is still unmatched, and this is also the case with the return of the bride price upon the dissolution of a marriage. Similarly, performing the burial rites ceremony for a deceased loved one is also an

²⁵⁹ Richard Falk, "Cultural Foundations for the International Protection of Human Rights" in *Human Rights in Cross-Cultural Perspectives* ed. Abdullahi Ahmed An-Na'im (University of Pennsylvania Press 1992), 44. See also Leslye Amede Obiora, "Feminism, Globalization, and Culture: After Beijing," *Indiana Journal of Global Legal Studies* 4 no.2 (1997): 378, <https://heinonline.org/HOL/Page?handle=hein.journals/ijgls4&div=25>.

²⁶⁰ Gregory Emeka Chimweuba and Chukwudi Evaristus Ezeugwu, "Culture and Change: A Critical Analysis of Igbo Cultural Alienation in Chinua Achebe's *Things Fall Apart*," *Philosophia* 30, no. 1 (2018): 123, https://philosophiajournal.files.wordpress.com/2018/06/115-129_phil_19-2018_chinweuba-ezeugwu.pdf

enduring custom that many Igbo families still practice, both willingly and unwillingly, despite uncertainties about the human rights implications for those involved. These ceremonies continue to hold cultural and traditional significance, serving as a way to honor and pay respects to the deceased.

Given these realities, the Igbos often view Western practices that undermine their customary norms as foreign, learned, and newly adopted codes of conduct that add to rather than replace socio-cultural relationships from the Indigenous culture.²⁶¹

With respect to women's rights in Indigenous Igbo communities, there is a common assumption that cultural norms oppose women's human rights interests; this has led to a blind effort to eliminate culturally revered practices. However, this approach is met with stiff opposition. Many Igbo women are skeptical about the implications of discarding their culturally held beliefs and question whether what is prescribed as norms and rights are nothing more than the customs of the West. On the other hand, despite the widespread acceptance of cultural practices and norms, some women challenge the relevance of certain cultural practices, especially in today's society. This presents a complex situation because the universalistic human rights strategies have not brought about significant change. Therefore, a new approach is needed to implement contextually appropriate reforms that can be embraced in local communities.

In Indigenous Igbo communities, the central place for social order is deeply rooted in their culture, norms, and cultural institutions. Therefore, any cultural reform aligned with human rights considerations should involve negotiating and utilizing local resources to ensure effective implementation. Neglecting these local resources can result in a limited understanding of the context within which women's rights in local communities are understood and miss valuable perspectives that could inform effective strategies to promote women's rights.

Although certain socio-cultural institutions in Igbo communities are relatively permanent, they do change, especially in the face of globalization. As societies develop new perspectives, social attitudes and norms can change, influencing agreed-upon community relationships. The catalysts for such changes and the factors that inform them are closely tied to the social structures that support them, and culturally accepted institutions play a crucial role in determining what changes will take place.

Rather than advocating for the abandonment of culturally recognized institutions and their related practices, it is important to consider contextual specificities when implementing human rights, especially in Indigenous communities like the Igbos society. This approach requires sensitivity to the power dynamics and conditions of struggle that shape the social positioning of women.²⁶² Additionally, it requires historical attentiveness to the context in which some cultural

²⁶¹ Hin-Huang Michael Hsiao, *Coexistence and Synthesis, Cultural Globalization and Localization in Contemporary Taiwan* (New York: Oxford University Press, 2002), 52.

²⁶² Vasuki Nesiah, "Towards a Feminist Internationality: A Critique of U.S Feminist Legal Scholarship" 16, no. 1 *Harvard Women's Law Journal* (1993): 189.

practices and institutions have emerged. This would provide an effective way to make sense of a community's experiences, uncover the meaning of the most prevalent cultural practices, and avoid misconstruing some of their key components.

Cultural interpretation has significantly affected the understanding of some cultural norms and practices in Igbo society. In writing about misconstructions of culture, Nzegwu opines that the presumption of female subjugation in discriminatory cultural practices within Igbo society is influenced by distortions created by Western-derived theoretical frameworks.²⁶³ She argues that these distortions often overlook and misinterpret the agency and power dynamics that exist within the Igbo society, ultimately resulting in an inaccurate understanding of cultural practices and the roles of women within them.

There is no doubt that the lack of clear boundaries between what constitutes Igbo culture and what does not present a constant struggle that demands close examination. However, fixating on the past, particularly in the precolonial era, will not bring about the changes that Igbo women seek today. Even if we assume that Igbo culture before the colonial era was not inherently patriarchal and that Western introductions distorted it, the fact is that at present certain customs within the Igbo society foster unequal relations between men and women in terms of rights. Rather than questioning the accuracy of past depictions of Igbo culture and customs, the focus should shift towards exploring how enduring cultural practices can be modified to enhance the welfare of all women. The crucial question becomes: How do we transform customs that restrict women's rights into ones that foster women's empowerment and support the full realization of their rights to equality?

To address these challenges, particularly in Igbo communities where customs influence behaviour more than laws established through legislation, potential solutions may involve the reinterpretation doctrine. Re-interpreting culture refers to the process of examining and reconsidering the traditional values, beliefs, practices, and customs of a particular society or group. It involves taking a critical and reflective approach to cultural norms and exploring how they can be adapted or transformed in response to changing circumstances or new ideas.

As articulated by Melville Herskovits, reinterpretation is the process through which people seek to relate to and adapt to their changing experiences by using the past as a marker for interpreting the present.²⁶⁴ Concisely, Herskovits defines re-interpretation as:

The process by which old meanings are ascribed new elements or new values change the cultural significance of old forms. It operates internally from generation to generation, no less than in integrating a borrowed element into a receiving culture.²⁶⁵

²⁶³ Nzegwu, *Family Matters*, 20.

²⁶⁴ Melville J Herskovits, *The Myth of the Negro Past* (Boston: Beacon Press, 1990), 16.

²⁶⁵ Herskovits, *The Myth*, 21.

When considering the mechanisms of re-interpretation in the context of norm change, its proper application involves establishing a connection with the historical experiences of a community. This offers an opportunity for continuous learning and reassessment, with the possibility of making new choices. In the case of the Igbo society, the successful implementation of the re-interpretation doctrine must first begin with aligning with the social identities of the Igbo people. Norm changes are more likely to be successful if they are carried out in a manner that aligns with the community's values and enjoys their support rather than being imposed from a top-down approach.

Supporting this perspective, Bonny Ibhawoh emphasizes the need to adopt a “culturally sensitive approach that seeks to understand the social basis of cultural traditions and how cultural attitudes may be changed and adapted to complement human rights.”²⁶⁶ Ibhawoh argues that reformatory changes to existing social arrangements require local involvement, and they must be executed in a way that does not compromise the cultural integrity of the people. In essence, for cultural reform to succeed, local communities must feel a sense of ownership and active engagement in the process.”²⁶⁷ The challenge here is to avoid a direct conflict between human rights norms and the ideals upheld in Igbo customary practices. The key is always with respect to how these rights are conveyed and presented to women in local communities. The way these human rights concepts are presented may leave some women with an unrealistic grasp of what these rights mean for them and how to access them.

Aihwa Ong emphasized the need for human rights implementation efforts to focus on developing a practical understanding of its key concepts rather than packaging them in abstract terms. Ong argues that feminism and women's rights only make sense in terms of the imagined communities within which people live and their embeddedness in cultural relations and norms and what they define as a “good life” for themselves.²⁶⁸ To achieve this, she contends that human rights initiatives must address how discussions of community, development, and gender are negotiated in a particular society. Ong exemplifies this approach with the Sisters of Islam, a group that has gained global recognition for their efforts in negotiating the space to articulate women's rights with the narratives of their community by interpreting Islamic text. The Sisters re-interpret sacred Islamic canons and text through the lens of human rights norms to demonstrate that it is patriarchal attitudes and misinterpretations of Islamic sources and not Islamic text in themselves that motivate pervasive patterns of discrimination against women.²⁶⁹

²⁶⁶ Bonny Ibhawoh, “Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State,” *Human Rights Quarterly* 22, no. 3 (2000): 856, <https://doi.org/10.1353/hrq.2000.0034>.

²⁶⁷ Ibhawoh, “Between Culture and Constitution,” 856-857.

²⁶⁸ Aihwa Ong, “Strategic Sisterhood or Sisters in Solidarity? Questions of Communitarianism and Citizenship in Asia,” *Indiana Journal of Global Legal Studies* 4, no. 1 (1996): 113.

²⁶⁹ Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (New York: Addison-Wesley, 1991), 17.

Abdullahi Ahmed An-Na'im also supports this approach of re-interpreting religious texts where necessary to frame them in communal terms. He argues that a distinctive advantage of this approach is that it reduces the chances of alienating women from their communities of origin and enhances the chances of enlisting the cooperation of these women for change.²⁷⁰ An-Na'im maintains that:

Our commitment should not be the rights of women in the abstract... it should be a commitment to the rights of women in practice; the rights of rural and Nomadic African and Asian women to live in very "traditional" or tribal communities and practice Islam, or other religious beliefs, out of genuine conviction...it is irresponsible and inhumane to encourage these women to move too fast, too soon and to repudiate many of the established norms of their culture or religious law, without due regard to the full implications of such actions. It must be remembered that it is these women who will have to remain to endure the full consequences of their actions.²⁷¹

An-Na'im's opinions align closely with the idea that the goal of any cultural reform process should be to establish a relatable framework that clarifies the interpretation and implementation of human rights within the context of Igbo culture. This approach can allow for an integration of human rights principles and Igbo cultural values, ensuring that women have a comprehensive understanding of their human rights while staying true to their cultural values.

While the process of re-interpreting cultural norms may seem feasible in theory, it is important to avoid presenting it in the abstract as well, and this requires specific implementation mechanisms. This raises the question of who is qualified to engage in the process of re-interpreting culture? How do we begin? In the case of the Igbo society, knowledge is often communicated with a communal voice that begins with a familiar phrase in Igbo lingua *Ndi banyi si/* our people said. The intentional use of these words undoubtedly legitimizes the fact that cultural knowledge begins first with a cohesion of the past and before moving forward to the future. Given that the Igbo society is structured around cultural foundations and upheld by socio-cultural institutions, those responsible for safeguarding and transmitting culture, whether elected or by birth, hold a pivotal position that the community has recognized. Additionally, it is a well-known fact that people are more receptive to change when they trust the change maker. Therefore, a practical application of the reinterpretation doctrine begins with local involvement and the recognition of the community leaders as custodians best suited to facilitate meaningful change.

This assertion aligns with the social perception of leadership in most African communities, including the Igbo society. The rudiments of the Igbo leadership system were forged in the form of democratic socialism that the people themselves developed. This system evolved from their cultural way of life and was formulated in their own terms. As Julius Nyerere notes:

²⁷⁰ Abdullahi An -Na'im, "The Rights of Women and International Law in the Muslim Context," *Whittier Law Review* 3, no. 1 (1987): 502.

²⁷¹ An-Na'im, "The Rights of Women," 506.

The African's mental conception of "government" was personal and not institutional. When the word government was mentioned, the African thought of the "Chief"; he did not, as does the Briton, think of a grand building in which a debate was taking place.²⁷²

This points to one of the distinctive elements of the Igbo leadership system. There has long been acceptance by the people that there is a leader who holds all authority and under whose will the people are united and act. While these customarily recognized leaders are usually men, reflecting that the kinship system is heavily rooted in patrilineal lines, there is still the possibility that women's needs can still be articulated and accepted. As recognized and accepted customary leaders, they significantly influence whether harmful gender norms or practices persist or change. For example, the participatory roles played by the community leaders (*ummunna and ndi ichie*) in the atonement rituals following accusations of adultery are a testament to this fact. With careful consideration, such positions of influence can be leveraged to re-interpret the cultural requirements of the atonement ritual.

Some African societies have adopted this approach to reconcile cultural expectations with human rights standards. They have carried out a process of cultural reinterpretation in ways that retain the essence of strongly held cultural values while placing human rights principles at the forefront. For example, in Kenya, there have been attempts to end female genital mutilation by introducing alternative rites of passage to womanhood. The idea behind the alternative rites of passage program²⁷³ was to work with local communities in Kenya to develop and support a rite of passage that excludes genital cutting while still aligning with the cultural beliefs and behaviours of each ethnic group.²⁷⁴ Given that the cultural essence of the practice itself was the initiation into womanhood in the sense that it signified readiness for adulthood, the alternative rites approach included a secluded formal training that incorporated Indigenous learning mechanisms for the girls. This is because a component of the traditional rites during the FGM initiation process required the seclusion of the girls and was still relevant to the teaching about adult life that took place at that time. To emulate this traditional practice of exclusion, the Alternative Rites Approach included seclusion for three to five days, during which the girls were given information on reproductive health through a formal curriculum. In addition, the girls were also engaged in an interactive session where they received words of wisdom from selected cultural leaders in their society.²⁷⁵ A hallmark of the circumcision ritual is the public ceremony in which the girls who have undergone the process are publicly recognized and praised in the communities and welcomed into womanhood. Gift sharing is a common part of this. This same community display of praise

²⁷² Julius Nyerere, "The African and Democracy" in James Duffy & James Manners, *Africa Speaks* (Princeton NJ: Van Nostrand, 1961), 33.

²⁷³ The program was implemented by the Maendeleo Ya Wanawake foundation (MYWO) and the Program for Appropriate Technology in Health (PATH) for the first time in Kenya.

²⁷⁴ Jane Chege, Ian Askew, and Jennifer Liku, "An Assessment of the Alternative Rites Approach for Encouraging Abandonment of Female Genital Mutilation in Kenya," FRONTIERS Final Report. Washington, DC: Population Council, (2001): 16, <https://doi.org/10.31899/RH1.1009>.

²⁷⁵ Chege, Askew, and Liku, "An Assessment," 17.

was replicated with the alternative rites approach. A public ceremony was held in honour of the participating girls to mark their graduation from the secluded training. They were given gifts, and the participating members of the community sang their praises.²⁷⁶

In the Igbo context, substantial modifications of the Igbo culture and traditions have occurred, despite beliefs in the enduring nature of the Igbo culture and traditions.²⁷⁷ Upon closer examination of societal changes in Igbo norms, it becomes evident that to enhance the well-being of women, change should not replicate patriarchal tendencies as a standard. Nzegwu argues that much of what is considered as Igbo culture has been “reinvented, reshaped and affected” by the patriarchal ideology of colonial rule.²⁷⁸ Although her statement carries a negative connotation, it highlights the potential for endless possibilities that abound in the Igbo culture, provided the right change mechanism is deployed.

A relatable example is the judicially invalidated custom of female inheritance in Igbo society. As discussed above, despite several court rulings against it, the recognition of female inheritance rights has not been fully embraced. Women may experience untold violence when insisting on exercising their rights to inheritance. Nnenanya Onu’s story serves as an example. She was allegedly murdered by her cousins. Her assailants attacked her, stripped her naked, and set her body on fire. This happened behind her father’s house in Onicha Igbeze, in Ebonyi State. The deceased’s sister, Juliet Onu, gave the background story in a journalist’s investigation. She stated that the deceased insisted on inheriting property from their late father who had passed without a will. She further stated that their mother, who gained her livelihood through farming, had to stop going to the farm because their late father’s relatives seized ownership of any property after his death. This story is one of the many tragic accounts of Igbo women who still experience violence when insisting on their rights to inheritance, even after the Supreme Court’s decision in *Ukeje v Ukeje*.²⁷⁹

Despite judgments like *Ukeje*, the challenge has always been to reconcile the intentions of certain laws, presumed historical customs, and women’s lived experiences in local communities. Although some writers argue that it is incorrect to assume that women are denied inheritance of property in Igboland and that they are only prevented from inheriting ancestral lands that are solely reserved for sons, this distinction has still not provided them with an opportunity for independence in cases where it is necessary.²⁸⁰

²⁷⁶ Chege, Askew, and Liku, “Alternative Rites Approach,” 26.

²⁷⁷ Stella Chinweudo Ekwueme and Chibuike Tobias Onah, “The Influence of Modernity on Igbo Traditional Religion and Cultural Values,” *International Journal of Management, Social Sciences, Peace and Conflict Studies* 2, no. 2 (2019): 85, <https://www.ijmsspcs.com/index.php/IJMSSPCS/article/view/35>.

²⁷⁸ Nzegwu, *Family Matters*, 93.

²⁷⁹ Folashade Shalom Asaolu, “Gladys Ukeje Fought for Her Right to Inherit, Now All Igbo Women Can,” *Document Woman* May 4, 2023, <https://documentwomen.com/gladys-ukeje-fought-for-her-right-to-inherit-now-all-igbo-women-can>.

²⁸⁰ Azuka Onwuka, “Inheritance of landed property by women in Igbo land,” *Opinion Nigeria* August 4, 2020, <https://www.opinionnigeria.com/inheritance-of-landed-property-by-women-in-igboland-by-azuka-onwuka/>.

The *Oku-ekpe* custom within the Igbo society governs most cultural inheritance disputes and is one that has also allegedly suffered misinterpretations both by social actors in the community and by the judges in courts because of their unfamiliarity with the context of the practice. The *Oku-ekpe* states that in the absence of a male child to inherit a father's estate, the late man's brothers are next in the line of inheritance, followed by his nephews, but this is after his widow has died and all the daughters are married.²⁸¹ If stripped of its patriarchal stigma, customs like the *Oku-ekpe* custom can be re-interpreted as being in place to benefit all family members from the assets and resources of the family, with the family head only acting as an agent to guarantee access. The rights and entitlements of disadvantaged family members can be better secured by communal sharing and common belonging, enabling them to collectively enforce against an irresponsible family leader. Through the reinterpretation of the primogeniture principle that governs the inheritance culture in the Igbo society to include men and women equally, the culture and practice can be better enriched to truly reflect a consideration of the welfare of all community members. This principle was reinforced in *Ugboma v Ibeneme*,²⁸² where the expert witnesses who testified in favour of the defendant argued that by Igbo customary law, the eldest son inherits all his father's landed property (including houses) to the exclusion of his siblings and could dispose them without his siblings' consent and that though it was usual for the younger brothers to be given allotments of farmland, they had to approach their eldest brother for it. However, the trial judge rejected this argument as the law in Igbo land and held rightly that land among the Igbos is inherited by all the sons as family property and that the eldest son, as the head of the family, is only a caretaker who holds it for the benefit of other members of the family.

The same principle of prioritizing the best interest of the family can also be extended to the settlement of marital property in customary divorce, particularly when the women involved have children in the marriage. The economic security of most women in Indigenous Igbo communities is usually secured through marriage. By adopting a perspective that encompasses the overall welfare of all family members, customs and practices that exclude women from receiving a share of the family property after the end of a marriage, whether by choice or by death, can be reinterpreted to reflect consideration of the welfare of these women.

In cases where a woman is accused of committing adultery, communal efforts could be directed towards reconciling the unity of the family rather than focusing primarily on confession and atonement. If community leaders were incentivized to use their positions of influence to ensure that, in these instances, the reconciliation process begins with the consciousness of protecting the human rights of all parties rather than prioritizing the cultural hierarchies, significant shifts could occur. Since the goal of most community dialogues where contested claims are determined is reconciliation, the same customs and values can still be preserved if the end goal shifts to

²⁸¹ Stephen Chukuka Unachukwu, "Judicial Attitude to Igbo customary Laws on the Inheritance Rights of Women: Beyond the Present Euphoria of Judicial Pronouncements," *African Customary and Religious Law Review* 1, no. 1 (2020): 32.

²⁸² *Ugboma v Ibeheme* (1967) F.N.L.R 251.

reconciling members of the affected families rather than punishing the woman for her shortcomings.

One could argue that the best interest of the family principle that supposedly underlies most Igbo customs aligns with the principles of international human rights laws aimed at promoting welfare/well-being. Thus, some Igbo customs, at their core, arguably seek to establish harmonious community relations and promote the welfare of all affected individuals, albeit the difference in how they are presented. As Nzegwu argued, the imposition of foreign legal systems during colonial rule has resulted in a distorted perception of most Igbo customs, thus obscuring their original intent, and leading to misinterpretations. Examining these Indigenous customs, first with the understanding of their original role in relation to welfare and then their capability to meet contemporary social realities, makes it possible to bridge the gap between cultural norms/practices and international human rights. Re-interpretation can be an avenue to bridge this gap and offer an opportunity to engage with customs beyond a surface-level understanding. It requires an inclusive approach to achieve this, one that considers the importance of the involvement of cultural leaders, especially those who hold the audience of community members. Through this approach, the community can have a chance to reclaim the essence of these customs, restore their original intent, and ensure that they truly reflect the welfare intent enshrined in international laws through more appropriate means.

Taking a broader view within the Nigerian legal system, the re-interpretation doctrine, if applied, may help to rectify the misrepresentations of culture that can occur when relying on evidence about the existence of cultural practices under the Evidence Act. The Evidence Act provides that “where a custom cannot be established as one judicially noticed, it shall be proved as a fact.”²⁸³ Furthermore, section 16(2) of the Evidence Act places the burden of proving the existence of a custom on the person alleging it. Consequently, witnesses can be called to give evidence of the existence of a custom where the court has not noticed it judicially.²⁸⁴ In filtering customs, courts apply the repugnancy doctrine.²⁸⁵ However misrepresentations of custom can occur either as a result of unfamiliarity with the context in which the custom was adopted or due to the testimony of witnesses whose statements reflect self-interest rather than the truth. The resulting errors can negatively impact women’s capacity to fully exercise their rights, particularly when the court gives credence to expert testimony in coming to its decisions. Re-interpretation doctrine should prove useful to rectify such problems.

The reinterpretation doctrine can also be used to widen the TWAIL analysis that advocates for the inclusion of values that reflect Third World perspectives. TWAIL contributes to the doctrinal method of international law by challenging the traditional sources of international law with the aim of decolonizing the general principles on which they are formed. It has done so by

²⁸³ Evidence Act, Section 18(1).

²⁸⁴ Evidence Act, Section 16(2).

²⁸⁵ The repugnancy doctrine is used to invalidate barbarous customs. Based on the doctrine, customs against natural justice, equity and good conscience will be rejected by the Courts.

adopting a historical lens to assess how international human rights are constructed and legitimized in developing countries.²⁸⁶ A core aspect of TWAIL analysis is the idea of enabling Third World States to interpret and apply international law in ways that align with their own values and social arrangements rather than it being dictated by Western perspectives. Given that the issue with many international human rights related to women's rights in Igbo societies is how these rights are implemented and not whether these rights are indeed received, attempts at settling the conflict between women's human rights can make better progress if culturally accepted institutions and their leaders are considered as potential drivers in implementing women's right.

This approach relies on the cultural relativist theory of international law. It represents a departure from how Western countries have tried to universalize the adoption processes of international human rights norms in Third World States. TWAIL presents a different approach to rights adoption that recognizes and protects the rights and interests of Third World States peoples. Consequently, TWAIL doctrine can be better enriched if it acknowledges that Indigenous systems in Third World States are capable of reconstructing and reinterpreting international human right laws in ways that best protect their interests and allows them to meet their contemporary needs in ways that they find culturally suitable. The reinterpretation doctrine would allow recognized cultural leaders to actively participate in translating international human rights norms in their societies. Their active participation would allow for proper accommodation and recognition of the shared values and norms of the people instead of blind reliance on dominant norms favouring universal application of the abstract concepts contained in international human rights laws.

Reinterpretation is not without its challenges, especially in practice. Regarding Igbo customs, one of the main challenges is defining what customs, meanings, and norms are most amenable to change and which ones are resistant to it. What should we keep, and what should we take away? How can we ensure the certainty and parameters of certain cultural concepts, given their inherent flexibility and the fact that everyday encounters continually shape individuals' interpretations and understandings of these customs?

These concerns with the reinterpretation doctrine are valid, but they can be alleviated and put to rest if reinterpretation is thorough. This can be achieved through a structured approach that is deeply rooted within culture because where customary law reforms are concerned, there is a need to avoid a non-inclusive top-down approach that treats cultural practices and their supporting institutions as barbarisms that should not be acknowledged. Rather, efforts should be made to democratize any reform process that hopes to improve the lives of Indigenous women, allowing those intimately affected by these reforms to actively participate in determining the changes to embrace or reject based on their collective experiences and historical realities. To do otherwise will inevitably undermine any attempts at human rights reform, especially in Indigenous communities like the Igbo society.

²⁸⁶ Endalew Lijalem Enyew, "Sailing with TWAIL: A Historical Inquiry into Third World Perspectives on the Law of the Sea," *Chinese Journal of International Law* 21, no. 3 (2022): 448, <https://doi.org/10.1093/chinesejil/jmac028>.

4.2 Community Dialogue for Equality

Introduction

Promoting transformative change that shifts harmful cultural practices within local communities, even with the reinterpretation approach discussed earlier, can often be a complex task, one that might require a multifaceted approach. Dialogue is one of the approaches I argue that has the potential to raise awareness and consciousness about women's rights to equality at the local level and influence development outcomes in this direction.

Dialogue provides an opportunity to involve individuals and groups in exploring societal issues about which views differ, often to the extent that polarization and conflict occur.²⁸⁷ I define "dialogue" as a facilitated community experience designed to provide a safe space through which the concerns of community members can be addressed. A key feature of group dialogues is usually the presence of a facilitator of a higher social status than the participants during the dialogue sessions. With the presence of a presiding senior, the dialogue has the potential to harness the respect for a presiding power during the sessions directed towards achieving personal and community transformation, conflict resolution, advocacy, and social change.

Dialogue has always been a recurrent feature in many African cultures, especially in resolving contested issues. Terms such as "*Ogwa*", "*Izu*", and "*Nzuko*,"²⁸⁸ have often been used to refer to meetings for dialogue in Igbo society. Many discussions in these meetings focus effectively on resolving conflicts. Dialoguing involves participants being open to using arguments to dismantle and reconstruct any established consensus. The idea of shared values can make an impactful difference in inter-group dialogues for equality. People are more likely to think together when they can create shared meaning through familiar avenues rather than simply searching for facts from the unknown. In many Indigenous communities, the foundation of this practice is characterized by: (a) mandatory attendance, (b) truth finding, (c) collective responsibility, (d) involvement of elders, (e) spirituality, (f) sacred relations, (g) common goals and the shared identity of the community, (h) fairness, (i) admission of wrongdoing and forgiveness, (j) reparation of damaged relations, and (k) rituals.²⁸⁹

Traditionally the *Ogwa* or *Izu* gatherings were pivotal to the Indigenous dispute settlement mechanisms in Igbo society. The overall strategy of these meetings was peacebuilding fostered through the collective opinions of all attending members. This existing mechanism of community building through dialogue can be utilized in the following ways to contribute to social and cultural transformation.

²⁸⁷ Adrienne Dessel, Mary E. Rogge, and Sarah B Garlington, "Using Intergroup Dialogue to Promote Social Justice and Change," *Social Work* 51, no. 4 (2006): 307, <https://doi.org/10.1093/sw/51.4.303>.

²⁸⁸ The three words translates to meeting and settlement.

²⁸⁹ Brandon D. Lundy, Tyler L. Collete & J. Taylor Downs, "The Effectiveness of Indigenous Conflict Management Strategies in Localized Contexts," *Cross Cultural Research* 56, no. 1 (2022): 10, <https://doi.org/10.1177/10693971211051534>.

4.2.1 Inter-gender Dialogue for Re-education

The transition from acceptance of gender discrimination to the identification of discrimination and inequality as a shared concern or problem that requires the collective attention of community members can be complex.²⁹⁰ Inter-gender dialogue can be a beginning step. Inter-gender dialogue can be understood as a process that consists of an open and respectful exchange of views between men and women based on mutual understanding and respect. It requires equal freedom to express oneself, as well as willingness and capacity to listen to the views of others.²⁹¹

Discriminatory practices have for a long time been accepted as a part of Igbo customs which people barely talk about. Avoidance of discussions about gender discrimination and sexual violence can end if dialogue is used to shift the community's perception of the issue. Dialogue can enhance collective thought, shared values, and movement towards new standards regarding community behaviour while instilling a willingness to support each member of the community.

Inter-gender dialogue can serve several purposes, but its overriding objective is re-education. Because it is an interactive process, inter-gender dialogue can help to create a shared understanding of the issues and awareness of perspectives that affect the development of women, especially at the grassroots level. The focus of dialogue is to advance understanding and consciousness of women's rights, creating a common conviction for their acceptance. It provides an opportunity to address real concerns through critical engagement across cultural lines while building attitudes necessary for a democratic culture.²⁹²

Some African feminists suggest that negotiating women's rights to equality with men is the best way to progress towards women's equality with men in Africa.²⁹³ Inter-gender dialogue has consistently been associated with the social engagement of the Igbo society. It can be beneficial to diffuse misconceptions surrounding the meaning of feminism and the belief that it is contrary to African identity. Through open and locally informed dialogues, community members can gain a clearer understanding of what the concept entails, allowing for a more nuanced interpretation of feminism, one that is culturally sensitive to the commonly shared values of the community. In addition, the reinterpretation doctrine proposed in this thesis can gain acceptance through dialogue. By employing dialogue as a tool for re-education, communities can foster understanding of

²⁹⁰ Sarah Treves-Kagan et al., "Fostering Gender Equality and Alternatives to Violence: Perspectives on a Gender Transformative Mobilisation Programme in Rural South Africa," *Culture, Health and Sexuality* 22, no. 1 (2019):131, <https://doi.org/10.1080/13691058.2019.1650397>.

²⁹¹ Council of Europe, *White Paper on Intercultural Dialogue: Living Together as Equals in Dignity* (Strasbourg: Council of Europe Ministers of Foreign Affairs, 2008), 17.

²⁹² Council of Europe, *Intercultural Dialogue*, 19.

²⁹³ Obioma Nnaemeka, "Nego-feminism: Theorizing, Practicing and Pruning Africa's Way," *University of Chicago Press Journal* 29, no. 2 (2004): 381, <https://doi.org/10.1086/378553>. In this article, Nnaemeka argues that dialogue which has always been a recurrent feature in many African cultures can be used to reconstruct unequal power relations between men and women with what she termed nego-feminism.

women's rights and establish equally accepted meanings and new interpretations of existing customs.

4.2.2 Dialogue as a Resistance to Gender Inequalities

Igbo society operates based on certain values and principles. The principles of *Ezi-na-ulo* and *umunna* emphasize the importance of dialogue and consensus building. Historically these principles fostered a culture of inclusivity and equality within the Igbo society. Prior to colonization, the Igbos' political culture could theoretically have been described as dual sex. Under this dual-symmetrical structure, women had their own Governing Councils — *Ikporo-Onitsha* and *Nd'injom* that were utilized to address their concerns and needs. The councils protected the social and economic interests of women and guided the growth of the community. This dual-symmetrical structure gave women an important political profile in communities with constitutional monarchies as well as in communities with decentralised democracies in the eastern hinterland.²⁹⁴

The pre-colonial characteristics of the Igbo political and social culture can be popularized and practiced today if existing gender equality advocates and institutions utilize cultural leaders and institutions. As Nzegwu notes, vestiges of the pre-colonial Igbo cultural consciousness remain today, albeit in a modified form.²⁹⁵ These cultural remnants can be employed to address gender inequality in contemporary Igbo society. For example, in the Nri Community of Anambra State, one of the prerequisites for marriage is the observance of traditional precautionary rules against domestic violence. During marriage ceremonies, the groom is required to pay *ego otiti okpili*, which translates to “money for punishment” if he ever assaults the bride.²⁹⁶ The money paid is to be used by the groom's in-laws to hire youths from their clan to confront him if he molests or abuses their daughter during the marriage. To ensure that the groom comprehends the significance, he is summoned outside during the ceremonies, where the elders explain what the money is for and ensure that he comprehends what he is paying for. The groom essentially agrees in advance to submit to severe punishment if he assaults his wife. As crude as it may seem, the tradition is effective as it acknowledges and highlights an issue a woman could face in marriage and creates a penalty. Similarly, men of Iggah community in Uzo-Uwani Local Government Area of Enugu State are encouraged by the traditional ruler to involve the parents, family, or church of their wives when they want to resolve a grievance and not to resort to violence. The inclusion of the church as a channel for addressing conflict reflects the modernized form of Igbo culture of dialogue and peace making.²⁹⁷

²⁹⁴ Nkiru Nzegwu, “Recovering Igbo Traditions: A Case for Indigenous Women's Organizations in Development,” in *Women, Culture, and Development: A Study of Human Capabilities*, Martha C. Nussbaum & Jonathan Glover (Oxford: Clarendon Press 1996), 444.

²⁹⁵ Nzegwu, “Recovering Igbo Traditions,” 451.

²⁹⁶ Anyao Okoli et. al., “How Igbo Customs Checkmated Wife Battery,” *Vanguard*, April 27, 2022, <https://www.vanguardngr.com/2022/04/how-igbo-customs-checkmated-wife-battering/>.

²⁹⁷ Anyao Okoli et. al., “How Igbo Customs.”

Another example is the culture of the Ogrute autonomous community in Igbo-Eze North Local Government area of Enugu State. If a woman is subjected to physical abuse by her husband, she can return to her father's home. A meeting is then called by the families. Her spouse meets her in her father's home for a discussion over kola nuts and drinks to address the issues in the marriage while seeking reconciliation. These examples show the traditional use of dialogue to prevent and resolve marital issues in Igbo communities and suggest that dialogue could be used on a larger scale to resist and prevent gender inequalities beyond marriage.²⁹⁸

Today, an evolved form of the practice of dialogue is the yearly August Meeting, also known as the "Mothers Summit." Igbo women are required to participate in these meetings in their communities. Traditionally held in August, these gatherings serve as a political symbol and strategy for the exercise of power and maintenance of identity among Igbo women.²⁹⁹ Its socialization feature provides a platform for Igbo women to come together as members of their Indigenous communities and engage in discussions centered around community development. An essential aspect of the August meeting is the sensitization of women, wherein efforts are directed at educating women and increasing community awareness of the cultural practices that prevent women from fully enjoying their rights. Common cultural issues affecting women's rights, like widowhood practices, have been reformed because efforts are made, especially by meeting group leaders, to educate women about their roles in society and in the family.³⁰⁰

These cultural institutions are governed by women and operate at the local level. However, those are their strengths. Their continued relevance is evidence of women's agency and activism in the social-political life of their respective communities. As a result, these institutions can be used in communities across Nigeria to promote women's awareness and enjoyment of their rights. Development programs for women often fail to acknowledge the relevance of local cultural institutions in their fight for women's right to equality. These institutions have grassroots orientations and legitimacy. They have a strong community base as well as an extensive knowledge of their community values and needs. This makes them ideal channels in which to undertake most equality projects for women's benefit at the local level.³⁰¹

4.2.3 Dialogue as Empowerment

Most interventions to increase women's voices and participation in determining policies that affect them begin with local dialogues at the grassroots level. Dialogue can be a means by

²⁹⁸ Anyao Okoli et. al., "How Igbo Customs."

²⁹⁹ Akachi Odoemene, "(Re) Venturing into the Public Sphere: Historical Sociology of 'August Meeting' among Igbo Women in Nigeria" *African Development Journal* 36, no. 2 (2011): 220, <https://www.ajol.info/index.php/ad/article/download/74109/64769>

³⁰⁰ Christiana Nwaogu & Angela Nkwo-Akpolu, "Despite Criticisms, Igbo Women Still Cling to August Meeting, Celebrate in Style," *Leadership*, August 20, 2022, <https://leadership.ng/despite-criticisms-igbo-women-still-cling-to-august-meeting-celebrate-in-style/>.

³⁰¹ Nzegwu, "Recovering Igbo Traditions," 459.

which women engage governing institutions to attain concrete outcomes in their pursuit for better opportunities.

From an advocacy perspective, even in the precolonial era, Igbo women recognized that they could rarely gain from individual negotiations. Collective efforts, usually beginning with dialogue, were far more successful in influencing community policies in their favour. A key example of this is the 1929 war that began through dialogue but later culminated in the “Women’s War” in which women collectively fought to protest the imposition of the tax system that threatened their economic stability.³⁰² In their confrontations during this period, for the most part the women employed the conflict mechanism of dialogue with the colonial administration to pursue their objectives.

Dialogue is a long transformative process; if properly implemented, it can empower women to claim spaces in the local governance of their communities. One peculiar advantage is that it is most often grounded in the local realities affecting women. Through dialogue women can bring to the surface the issues that affect them collectively. It also affords women a safe supportive context within which they can explore their lived experiences in ways that allow them a chance to discover ways to mitigate the issues that affect them.³⁰³ One powerful example of existing women's institutions that have, through dialogue, enhanced the lives of women in local communities is the *Umu Ada* group. It is a traditional institution consisting of the daughters of a community primarily serving as agents of peacebuilding and reconciliation, and collectively as the vanguard of sociopolitical development. The group derives its effectiveness from its traditional status and sociopolitical power. This provides the group with legitimacy in the community.³⁰⁴

The Umuada’s role has been transformed significantly over the years, but that has not taken away its relevancy. In terms of community building and women empowerment, it is well recognized in Indigenous Igbo communities. The institution and its women are integral in sustaining the community's leadership structure and engaging in visible peacebuilding. Through dialogue, they mediate and help resolve numerous types of conflict within local communities, especially domestic ones. For example, if a husband is reported to be abusive, a group’s first approach is to act as a mediator by dialoguing with the parties. For conciliation, the parties are asked to explore nonviolent ways of resolving the issue and agree on the way forward. If the husband fails to ensure peace after this process, he is then reported to his *ummunna/kinsmen* and made to pay a fine to ensure his commitment.³⁰⁵

³⁰² Nzegwu, “Recovering Igbo Traditions,” 450.

³⁰³ Sarah Agate and Joel Agate, “Empowerment through Dialogue: Women’s Experiences with Division of Labour as a Leisure Constraint in Family Live”, *The Seneca Falls Dialogues* 2, no. 9 (2017): 155, <http://hdl.handle.net/20.500.12648/3430>

³⁰⁴ Joy Onyesoh, “Umuada: A Sociopolitical Institution of Peacebuilding and Conflict Management in Nigeria,” *Gender in Peacebuilding* 13, no. 1 (2021): 147, <https://doi.org/10.4000/poldev.4675>.

³⁰⁵ Onyesoh, “Umuada,” 142.

The roles cultural institutions like the *umuada* play in empowering women and in sustaining the gender complementarity culture in the Igbo society cannot be overemphasized. This also illustrates how existing cultural institutions could be adapted and harnessed to meet contemporary development needs and contribute to the fight for gender equality. When fully utilized, these institutions should help to improve gender relations in Igbo communities and will commensurately empower women and increase their development potential at the grassroots.³⁰⁶

The role dialogue can play in facilitating women's fight for equality needs to be more fully appreciated. Although dialogue does not replace justice, inclusive education, and other key interventions towards community building, if properly implemented, it can be an effective strategy in building an inclusive society.

4.3 CULTURAL COMPETENCY TRAINING

Culture and its attendant practices can influence the importance attributed to rules, hierarchy, and priorities with regard to the rights of individuals measured against the rights of the community as a whole and various methods of conflict resolution.³⁰⁷ For example, there is a widespread perception that marital rape is inconceivable. This view is generally attributed to the deeply entrenched beliefs about women's traditional roles in marriage. Consequently, many individuals, including women, dismiss the possibility that rape can occur in marriage or that women need to be protected when there is an allegation of marital rape.³⁰⁸ Given the significant impact of such cultural beliefs on the interpretation of individual actions, it is important for lawyers and other professionals providing legal and protective services to community members to receive culturally sensitive training. Such training will allow these professionals to understand the cultural beliefs and assumptions that shape personal relationships in the community, help them effectively address their clients' diverse needs, and provide appropriate services to them.

Generally, cultural competency is defined as a combination of attitudes and skills that promote clear and effective communication between individuals from different cultures. It has also been extended to include the provisions of services that are appropriate and accessible to a diverse range of clients and address the rights to equality and access to justice.³⁰⁹ Specifically, in the legal context, cultural competence involves providing culturally responsive services that help individuals successfully navigate the court and justice system, process information, and understand and comply with court orders. Cultural competence does not mean one can understand a particular

³⁰⁶ Chidi M. Amaechi and Obinna U. Muoh, "Women and Development in Africa: Urbanization and the Role of Umuada in Igboland, Southeast Nigeria," *Asian Women Journal* 34, no. 1(2018): 105, <https://doi.org/10.14431/aw.2018.03.34.1.85>.

³⁰⁷ Serena Patel, "Cultural Competency Training: Preparing Law Students for Practice in our Multicultural World," *UCLA Law Review* 62, no. 1 (2014): 140, <https://www.uclalawreview.org/pdf/discourse/62-7.pdf>

³⁰⁸ Amobi Linus Illika, "Women's Perspective of Partner Violence in a Rural Igbo Community," *African Journal of Reproductive Health* 9, no. 3 (December 2005): 82, <https://doi.org/10.2307/3583414>.

³⁰⁹ Cynthia Pay, "Teaching Cultural Competency in Legal Clinics," *Journal of Law and Social Policy* 23, no. 12 (2014):190, <https://doi.org/10.60082/0829-3929.1198>.

individual's motivations, needs, and expectations simply because one understands the individual's cultural background. Instead, cultural competency provides tools to increase understanding of the complexity of individual circumstances.³¹⁰ It can be particularly helpful in the following areas.

4.3.1 Cultural Competency Training for Professionals Handling Sexual Violence Cases in Igbo Communities

Cultural competency training for professionals working with victims of gender discrimination and sexual violence focuses on skills and knowledge that value diversity and on learning how to understand and respond to cultural differences.³¹¹ It can also increase professional awareness of the cultural norms and social practices that may negatively affect women's rights, especially at the grassroots level. Cultural competence can be achieved through professional development involving informal training courses, workshops, seminars, and ongoing personal experience.³¹² This training can provide its participants with a better understanding of the complexities of culture that may hinder a victim's access to justice, especially when dealing with interpersonal violence. There is also the possibility that it will contribute to the development of participants' intercultural communication skills, provide an avenue for exploring potential barriers to a victim's ability to access justice, and lead to the adoption of policies that are more sensitive to the needs of abuse victims.

In many cases involving sexual violence and discrimination, victims assume that government professionals will provide little or no support or help with their case. This assumption is not groundless. The record shows that members of the judiciary and administrative professionals in Nigeria have been slow to take action in many cases of abuse. This reluctance is sometimes fueled by a lack of awareness and skill. Several researchers on the cause of low reporting of sexual violence in Nigeria identify victim blaming, dismissive attitude of law enforcement agents, and difficulty in successfully prosecuting such cases as challenges.³¹³ Reports show that law enforcement agents and government workers exhibit a lack of will or a lack of the knowledge and understanding required to assess and investigate rape cases objectively. Administrative officers have refused to file rape cases due to an alleged lack of evidence or because the reported individual is a family member. In the latter case, officers encourage or intimidate the victim to settle out of

³¹⁰ John Martin et al., "Becoming a Culturally Competent Court," *The Court Manager* 22, no. 4 (2007): 7, <https://www.courts.ca.gov/partners/documents/CultComp.pdf>.

³¹¹ "Cultural Competence Training for Health Care Professionals," City Health Rank Roadmaps, last modified January 27, 2020, <https://www.countyhealthrankings.org/take-action-to-improve-health/what-works-for-health/strategies/cultural-competence-training-for-health-care-professionals>.

³¹² Vanessa I Cavanagh & Elena Marchetti, "Judicial Indigenous cross-cultural training: What is available, how good is it and can it be improved?" *Australian Indigenous Law Review* 19, no. 2 (2016): 49, <https://ro.uow.edu.au/sspapers/3683>.

³¹³ Tomi Grace Obagboye, "Low Reporting of Rape Cases in Nigeria: Challenges and Prospects," *African Journal of Law and Human Rights* 3, no. 2 (2019): 75, <https://journals.ezenwaohaetorc.org/index.php/AJLHR/article/download/794/763>.

court. These examples suggest of lack of training and ingrained cultural bias related to rape on the part of administrative officers.³¹⁴

The attitude of the police in the enforcement of gender violence laws is important to the cycle of violence. It can make or break the justice outcomes for the victims. With the right attitude, police involvement in domestic violence can help instill confidence in victims, promote women's rights, and lend a voice in promoting the implementation of gender violence laws.³¹⁵ Some African countries have devised mechanisms in line with competency training to ensure that victims of abuse get the help and support they need as early as the investigative stages at the police station. One such approach was taken in Kenya where Gender Desks were established in police stations to improve access to services for Survivors of Gender Based Violence (SGBV), including offering a survivor-centred response and a supportive environment for survivors to report cases of Gender Based Violence (GBV).³¹⁶ Women Police Stations have also been established in South Africa, Sierra Leone, Rwanda, and Liberia to foster cultural competency. According to a report on a consultative meeting on Gender-Based Violence in Sierra Leone by the United Nations Population Fund, the Women's Police Stations were set up to make it easier for women and girls to report domestic violence and to provide a specific unit within the police department where survivors could go for appropriate assistance.³¹⁷

These efforts have been replicated in relatively slow steps in Nigeria, despite the increased recognition by police stations across the country of the need for a survivor-centered response to gender discrimination and sexual violence. Full implementation of such measures in Nigeria should ensure that sexual violence cases are investigated with a fuller understanding of the cultural realities of the victims and greater awareness of their rights to privacy, fair investigative processes, and equal justice.

In the administration of justice, cultural competency can help professionals by increasing their awareness of cultural nuances so they can better assess the individual circumstances of specific cases and develop appropriate responses. Because there are many cultural groups in Nigerian society, the judiciary and investigative professionals dealing with sexual violence and abuse cases often deal with cross-cultural situations. To provide an equitable experience for all the diverse litigants seeking redress, court personnel need to become better attuned to cultural cues through education and communication.³¹⁸ For example, while some aspects of a particular culture

³¹⁴ Obagboye, "Low Reporting," 76.

³¹⁵ Abena Asefuaba Yalley & Molatokunbo Seunfunmi Olutayo, "Gender, masculinity and policing: An Analysis of the Implications of Police Masculinized Culture on Policing Domestic Violence in Southern Ghana and Lagos, Nigeria," *Social Sciences Humanities Open* 2, no. 1 (2020): 2, <https://doi.org/10.1016/j.ssaho.2020.100077>.

³¹⁶ Wanjohi Albert Ndungu, "The effectiveness of Police Gender Desks in Addressing Gender Based Violence: A Case of Nyandarua County – Kenya" (MSc Thesis, Kenyatta University, Kenya, 2016), 7.

³¹⁷ Ndungu, "Police Gender Desks," 9-11.

³¹⁸ Gail S. Tusan and Sharon Obialo, "Cultural Competence in the Courtroom: A Judge's Insight," *Georgia Bar Journal* 15, no. 4 (2009): 40, https://www.sog.unc.edu/sites/default/files/course_materials/OLAS_Cultural_Compentence_in_the_Courtroom_A_Judge%27s_Insight.pdf.

can significantly affect what is considered sexual violence, not all cultures will have those features or fit the same patterns. However, knowing these differences may help understand the complexities of sexual violence and how it exists in different cultural communities. The origin of bias with respect to sexual violence lies in part in the cultural backgrounds of professionals who deal with these cases. Nigeria's administrative professionals, law enforcement agents, and government workers come from different ethnic groups, each with its own values and cultural practices. These differences can present challenges when professionals are tasked with carrying out official responsibilities for victims of sexual violence or persons who have experienced gender discrimination. Consequently, there is a need to train these professionals on cultural competency regardless of their cultural background. This training will make them more effective in interpreting the law, responding to victims of sexual violence, and holding perpetrators accountable.

Nzegwu analyzes the effect of a judge's familiarity or unfamiliarity with a custom, especially where a woman's rights are to be determined. She opines that when judges lack in-depth knowledge of the context within which certain customs are practiced within a community they may misinterpret or overlook the implications of their continued practice on women's rights.³¹⁹ This limited understanding can act as a barrier, prevent judges from fully comprehending the complexity of Indigenous Igbo culture, and thus limit their understanding of the cases that come before them.

Cultural competency can help ensure confidence in the judiciary by the parties and the public. Many judgments related to women's rights in Nigeria have faced challenges in gaining acceptance due to the perception that the judges who render them do not adequately consider the cultural agreements within a community. When judicial decisions negate accepted cultural norms and standards, there can be resistance and reluctance to implementation of the decision. To address this issue, it is essential to foster an understanding of significance of cultural context within the legal system. Judicial officers, especially judges, need to take into proper account the diverse perspectives within local communities. This requires taking time to engage with the community and involve community leaders, elders, and stakeholders in local justice administration and thereby ensure that legal decisions are better integrated into the community's cultural fabric.

In sum, cultural competency training is invaluable for judicial officers and other professionals. Using legal tools to achieve lasting solutions that protect women's rights requires balancing legal principles with cultural realities. By acknowledging these realities, it can be possible to implement women's rights in more meaningful ways---even through the law.

4.3.2 Cultural Competency Training as Part of Legal Education

Lawyers can only be as good as the legal education system that produced them.³²⁰ Therefore, legal education must constantly evolve to meet the needs of a dynamic society. In the Nigerian context,

³¹⁹ Nzegwu, *Family Matters*, 87.

³²⁰ Fabian Ajogwu, "Legal Education and the Legal Profession – A Reality Check," (paper delivered at the 50th Anniversary of the Nigerian Law School, Lagos, Nigeria, July 25, 2014).

the legal system reflects a social complexity that has yet to be fully integrated into the training of lawyers. Notably, given the significance of customary law as a major source of law in Nigeria, it is imperative that legal education encompass a comprehensive study of how prevalent cultural practices and norms within diverse communities impact the justice system in the country. This approach ensures that lawyers are equipped with the necessary knowledge and insight to adeptly navigate the nuances of the Nigerian legal landscape.

In response to the constantly changing dynamics in which gender discrimination and sexual violence occur in communities across Nigeria, the inclusion of cultural competence training as a part of legal education should help lawyers to develop solutions that are inclusive, relevant, and responsive to the cultural context. Furthermore, this training will aid lawyers in prioritizing local collaborative problem-solving approaches that reflect shared perspectives and include community stakeholders. Lawyers who lack sufficient knowledge of the cultural nuances surrounding discriminatory practices relating to inheritance, divorce, adultery, or sexual violence may struggle to meet the needs of their diverse clients or present compelling cases effectively in court, particularly in local communities. By incorporating cultural competency knowledge as a mandatory component of their practice, lawyers can build trust, enhance access to justice, and contribute to a more inclusive legal system. By understanding and respecting the cultural context in which legal issues arise, lawyers can establish stronger connections with their clients, navigate community dynamics more effectively, and work towards ensuring that justice is promoted and accessible to all in familiar and comprehensible terms.

Legal education in some countries around the world has progressively taken steps to include cultural competency training for lawyers to recognize and respect Indigenous culture.³²¹ In Nigeria, the Council of Legal Education [CLE] bears the general responsibility for the legal education of persons seeking to be lawyers.³²² While the CLE has ensured that law students are trained in the various common law areas, it is still yet to consider cultural competency training as a fundamental part of the process. This omission poses limitations to the ability of legal professionals to serve diverse communities in Nigeria effectively. As Ngige notes, there is a need for a reorientation within the law profession and for legal education to take account of the existing cultural diversity in Nigeria.³²³ To address these imperatives, legal education stakeholders must make continuous and concerted efforts to strengthen extant partnerships and collaboration to enhance the quality of legal education, especially in the areas of gender and culture. Adding cultural competency training to legal education should ensure Nigerian lawyers have the skills and

³²¹ Australia and Canada are some examples of countries that have made cultural competency trainings a mandatory part of their legal education for lawyers.

³²² Okechukwu Oko, "Legal Education and Training in Nigeria," *African Journal of International Law and Comparative Law* 6, no. 3 (1994): 271, <http://dx.doi.org/10.1080/03069400.2019.1690343>.

³²³ Emeka Ngige, "Re-imagining Legal Education in Nigeria," *The Guardian*, April 26, 2022, <https://guardian.ng/features/re-imagining-legal-education-in-nigeria/>

knowledge to value diversity and understand and respond to cultural differences in gender discrimination and sexual violence cases.

CHAPTER FIVE

CONCLUSION

This thesis has explored the feasibility of utilizing custodians of culture in implementing women's human rights in Igbo society. The thesis proposes three approaches: reinterpretation of cultural norms, inter-gender dialogue, and cultural competency training as tools for change in how women's human rights are received in Igbo society. My examination of the Igbo cultural systems and practices has shown that cultural values influence the recognition and enjoyment of the fundamental rights of women in Igbo society. As shown in Chapter 3, cultural leaders enjoy social acceptance in Igbo communities as authorities who determine the legitimacy and validity of cultural practices. Their leadership can be utilized to strengthen protections for women's equality rights.

In the problem areas analyzed in this thesis, domestic laws have had limited success in protecting women's rights. Although international human rights law and human rights activists have played roles in the human rights translation process in the Igbo communities, they have failed to achieve significant results. Most Western scholars and human rights activists who campaigned for Igbo women's human rights portray culture as an impediment to women's human rights in Igbo society. At the same time, they have not been able to translate human rights law into changing the discriminatory practices towards women in Igbo society.

The Igbo society's vibrant traditional system has undoubtedly sustained most of the discriminatory practices explored in this thesis. This is evident in the role of Igbo society members and their leaders in the cultural practices that limit women's equal rights. Despite the existence of laws, legal reforms, and court judgements, the desire to maintain the status quo in terms of shared cultural beliefs and values appears to remain as strong, or stronger, than ever. In this thesis, I suggest that the reinterpretation doctrine be applied to cultural practices in the hope and expectation that social practices, cultural norms, and judicial attitudes to gender violence victims may change, especially if we adopt traditionally recognized institutions and leaders as translators.

The reinterpretation of cultural norms by the custodians of culture will provide an avenue for a critical assessment of the current interpretations of Igbo customs and traditions that limit women's rights in theory and practice. Many interpretations of some cultural norms in the Igbo society have strayed from the core values that originally underpinned them, resulting in a limited understanding of the reason behind these cultural practices. Therefore, it seems reasonable for the custodians of culture to explore more authentic interpretations of culture, considering human rights considerations. Of course, the focus should not only be on why and how traditional leaders or custodians of culture should re-interpret customs but also on how this reinterpretation, if done and received fairly, will shape how community members engage with discussions involving women's rights. An ideological shift is expected among community members, legal professionals, administrative personnel, and even judicial workers, if the reinterpretation of customs, inter-gender dialogue, and cultural competency training is done properly. Ideally, the shift will result in a total

abandonment of discriminatory cultural practices, reveal how women's human rights norms are negotiated, and change societal attitudes about women's rights.

Reinterpretation of culture can also be utilized as a medium through which cultural norms are brought to the forefront of negotiations regarding the adoption of certain international human right norms regarding women. However, as earlier stated, accepting this approach in practice cannot happen if biases concerning Indigenous Igbo culture and traditional systems continue.

Apart from the reinterpretation doctrine, this thesis puts forward two additional recommendations that should help to strengthen recognition of the cultural systems of the Igbo people in adopting women's human rights practices. First, in accordance with social context education, this thesis recommends cultural training and, secondly, inter-gender dialogues among community members.

Cultural competency training will require professionals handling cases of gender discrimination and sexual violence victims to possess skill-based training in intercultural competency, human rights, and Indigenous conflict resolution mechanisms. This training will help these professionals assist Igbo women who are victims of gender discrimination and sexual violence to get justice and legal protection without bias.

Established gender-oppressive Igbo cultural practices are collectively recognized and enforced by the community. Lawmakers and security agents are themselves members of the community, making them compromised by default. Consequently, these professionals must undergo extensive training to understand the cultural roots of gender discrimination and sexual violence enabled by their culture. These experts will then be better able to identify incidents of gender discrimination and sexual violence and apply the law properly.

Cultural competency training will also help law enforcement agents, law practitioners, and gender advocates identify and utilize cultural institutions within Igbo communities to promote gender equality and discourage sexual violence. Using cultural institutions to create and institute community practices that give effect to laws on gender equality and sexual violence will increase the recognition and responsiveness of community members to those laws.

Cultural competency training should also help block learned negative bias on the part of law enforcers, law practitioners, and gender advocates toward the customs and traditions of the Igbo people. Several researchers have noted that Igbo traditions are often seen as barbaric and oppressive to women by various foreign aid initiatives, gender institutions, and researchers. That view is not entirely accurate. There are some cultural practices observed within by Igbo communities that uphold human rights. Those positive cultural practices should be encouraged and popularized through educational initiatives.

Dialogue will allow community members to contribute equally to discussions concerning transformative initiatives aimed at integrating human rights considerations into the community's cultural values. This approach is valuable not only for fostering inclusive participation but also for

effectively assessing tangible changes in cultural norms. Discussion will enable community members to grasp the cultural complexities involved in gender equality initiatives while charting a path forward. Implementing gender equality initiatives can be challenging work. Attitudes and norms are complex. However, effective use of recognized cultural institutions and dialogic approaches towards norm change can create opportunities for sustained discussion of gender equality in Igbo societies.

Overall, the approaches suggested in this thesis are not without their difficulties. In addition, this study is limited in scope. It does not purport to provide a comprehensive, all-encompassing solution for the discriminatory circumstances and practices that negatively affect the well-being of women in Nigeria. However, the initiatives proposed in this thesis aim to develop a fuller understanding of the values that underlie cultural norms and practices in Igbo communities. The proposals point towards avenues for transformative change, especially if community cultural leaders lend their support to the effort. This is more than strict implementation of legal reforms has ever given Igbo women.

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