`

AN APPRAISAL OF WOMEN'S RIGHT TO PROPERTY UNDER CUSTOMARY LAW: A CASE STUDY OF WOMEN RIGHTS IN SOUTHERN KADUNA STATE

BY

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DECEMBER, 2016.

`

DECLARATION

I. NGU Jane Binang hereby declare that the work in this thesis titled: "***An Appraisal of Women's Right to Property under Customary Law: A Case Study of Women Rights in Southern Kaduna State***" has been carried out by me. The information derived from other literatures have been duly acknowledged. No part of this thesis has been previously presented for another Degree, or Diploma at this or any other institution.

_____	_____	_____
NGU Jane Binang	**Signature**	**Date**

`

CERTIFICATION

This Dissertation titled: "***An Appraisal of Women's Right to Property under Customary Law : A Case Study of Women Rights in Southern Kaduna State***" by **NGU Jane Binang** meets the regulations governing the award of the degree of Master of Laws (LL.M.) of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to God Almighty.

`

ACKNOWLEDGEMENT

My appreciation goes to God Almighty for life, for health and for divine guidance, making it possible to complete this work despite all odds.

I express my profound gratitude to my supervisory committee in the persons of Dr. A.M. Madaki and Prof. A.M. Gurin for their time, attention and guidance throughout the period of this research work. May the Almighty God reward them abundantly.

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`

ABSTRACT

In most tribes in the Southern part of Kaduna State, when a person dies, his property is been distributed among family members and the women are often left with no assets. This is because, traditionally, it is deemed that women are not entitled to right of inheritance of land or landed property, particularly property of their male parents or husbands. The courts did not help matters in the past as these customary practices might be seen to have enjoyed judicial favour in the sense that the courts have made pronouncements in the past to support them. In recent times however, the courts are beginning to reverse those decisions and rule in favour of the women. The recent courts ruling on the right of women to inheritance can now be considered as victory for gender equality in Nigeria. Although, implementation of these judgments are what will be likely to be fraught with difficulties because the inheritance custom voided by the court is deeply rooted and likely to be resisted by men folk in these traditional communities. The study shows that, Over the years. it has been a common perception that most women 's right are being suppressed in most customary practices. This includes the right to own properly, especially landed property. On the face of it, it may seem so, but looking critically at most practices, it is a misconception. The practices in Southern Kaduna State are not so different compared with other customs in Nigeria. A woman can own property of any kind if she has the means to such properly. Any customary practice that denies a woman the right to own any property is considered to be repugnant to natural justice, equity and good conscience. Therefore, the emphasis is on inheritance. The study also shows that women do not have equal right to property of their father with men in Southern Kaduna state. It shows also that women in Southern Kaduna do not inherit immoveable properly. It is therefore recommended that court should have a way of strictly implementing judgments and probably meting out sanctions for non-implementation should not be taken likely. Finally, adequate legislation should be made to address the land and landed properly aspirations of women in rural communities vis-à-vis the customary practices obtainable in these communities.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human & People's Right
ALL NLR	All Nigerian Law Report
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFRN	Constitution of the Federal Republic of Nigeria
ECWA	Evangelical Church of West Africa
JCA	Justice of the Court of Appeal
JSC	Justice of the Supreme Court
NMLR	Nigerian Monthly Law Report
NWLR	Nigerian Weekly Law Report
SIM	Sudan Interior Mission
UN	United Nations
WACA	West African Court of Appeal

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CHAPTER ONE:

GENERAL INTRODUCTION

1.1 Introduction

Customary Land law in Nigeria from earliest time is one of the oldest systems in Nigeria that remained relevant until the coming of the Europeans in the late 19th century. Customary land law and in Southern Kaduna predates the time of the creation of the place referred to today as "Southern Kaduna". The historical background of customary law in relation to land in Southern Kaduna is similar in some areas to other customs indigenous to Nigeria. However some minor differences exist, particularly as regards the right of women to own immovable property, i.e. real property rights of women in Southern Kaduna, which forms the basis of the entire discussion in this work.

The term "right" refers to the freedom and liberties of human beings to live with dignity. "All human beings are born free and equal in dignity and rights"[1]. Women's right as a term refers to the freedoms inherently possessed by women and girls of all ages, which may be institutionalized, ignored or illicitly suppressed by law, custom and behavior in a particular society[2]. These liberties are grouped together and differentiated from broader notions of human rights because they often differ from the freedoms inherently possessed by or recognized for the male folk. Although the activism surrounding this issue claims an inherent historical and traditional prejudice against the exercise of rights by women, but nonetheless, the emergence of municipal, regional and international laws over time have indeed relegated this claim.

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[1] Article 1, Universal Declaration of Human Rights by the United Nations General Assembly (1948)

[2] *Women's right, definition in Webster's New World College Dictionary,4th Edition, Wiley Publishing, Inc., Cleveland, Ohio, 2010* on <http://www.yourdictionary.com/women-s-rights>, Accessed on the 15th August, 2014. *Used by arrangement with John Wiley & Sons, Inc.*

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Women's right is usually associated with the right: to vote (universal suffrage), to own property, and to marital, parental and religious freedom.[3] This work centers on women's right to property especially under the customary law of the people of Southern Kaduna in Nigeria.

Upon her marriage, customary law entitles a woman to the provision of a home by her husband, even though a woman under some customs is treated like a property and subject of testamentary disposition[4]. While married to her husband, she is entitled to use such chattels as provided by him and to farm and harvest from any portion of the land which is allotted to her. Her right, however, is not proprietary for she evidently cannot hold or dispose of any part of the property.[5] She does not by virtue of her marriage become co-owner or joint-owner of her husband's property nor does her marriage secure for her the right to inherit such property on her husband's death[6].The above is the position in Southern Kaduna state in Nigeria. As Justice OPUTA puts it: "A woman cannot own land in her own right in many communities as custom of such communities demand. She only has custody of any piece of land the husband permits her to cultivate or else holds any land in trust for her male children only...[7]

[3].Oyelade O S,Women's Rights in Africa: Myth or Reality, for Dept of International Law, Faculty of Law, Obafemi Awolowo University,Ile- Ife, *P.4.* He observed also that under the UDHR, "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 brotherhood." It goes further: Everyone is entitled to all the rights and freedoms set forth 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. This is the position of Article 2 of the UDHR

[4]Abdulraheem, N. M,Women's Marital Rights: Perspectives from Nigerian Legal System, available at<https://www.unilorin.edu.ng/.../WOMENS_MARITAL_RIGHTS_PERSPECTIVES_FROM_NIGERIAN_LEGAL_SYSTEM.pdf>, Accessed on the 21st September, 2014

[5]Uzodike, E.N.U. "Women's Right in Law and Practice: Property Rights in Women, in: Women in Law (ed) Obilade, A.O (1997)p 305

[6]Ibid

[7] ibid

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1.2 Statement of the Problem

Women constitute a major group of human kind who are particularly vulnerable to exploitation. Despite statutory provisions and judicial authorities upholding women's rights as was done in the cases of **Mojekwu v Mojekwu**[8] and **Mojekwu v Ejikeme**[9], the reality is that women are still denied equal opportunity to inherit property with men. Some women still lose out completely from their husband's estate, due to ignorance and strict application and observance of repugnant customary practices, which prejudice against the status of women in the society and reduce them to mere second class citizens after men and cuts their bargaining power in economic, social and political affairs in a given place and at a given time. They are also usually scared to explore the option of litigation in some other cases. This is perhaps because of the phobia associated with being a litigant in a court of law in Nigeria resulting from illiteracy or lack of enlightenment as regards their fundamental rights and the cost of financing the case. In order to have a healthy and happy society in Southern Kaduna and throughout the world, particular attention has to be paid to protect the rights of women to own and inherit property which happens to be an ongoing struggle begging for a wider platform for the consideration of options and chances available to protect the property rights of women in Southern Kaduna as has been set out to do in this thesis. The legal rights of the Nigerian women to own and inherit property are contained in various municipal laws and international instruments. This research is to compare the customary practices in Southern Kaduna with regards to the right of women to own and inherit property with some international instruments such as the UN, CEDAW, the African women's protocol, The Nigerian Constitution, as well as other international and regional statutes and conventions for women's rights protection.

[8] (1997) 7NWLR, pt 521 at 283
[9] [2000] 5 NWLR 402

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In other words, the Problems of this research is best captured thus: In Southern Kaduna, when a head of family dies, for example, a father, or male member is entitled to inherit landed properties of their father. In other words, they can be given a portion of the family land absolutely or temporarily, to the exclusion of female members. In other words, women are not entitled to a portion of land left behind by their father. Secondly, if a husband dies, his wife is not entitled to a house her husband left behind. She cannot inherit it and cannot be given absolutely a part of her husband's landed property. This is because under customary law, strictly, she is not part of her husband's family. Family membership is acquired through blood relationship. She is related to the husband by affinity. However, her disqualification in her father's property is purely based on the fact that she is a woman. If she is given absolute ownership of a portion of her father's property, there is the likelihood that the land will pass to her husband's family forever. This would be a minus to her father's family. It is because of this that a female does not inherit landed property in most communities in Southern Kaduna. This problem continues up to the present day unabated.

1.3 Aims and Objectives

The aim of this research work is to examine the problems in the Southern part of Kaduna state concerning the abuse of rights of women in relation to inherited property, with the view to identifying the factors responsible for this. It is equally the task of this work to make recommendations and suggestions at the end of the research with the hope that it will greatly educate and enlighten all stake holders and beneficiaries on these rights and accord greater attention to their implementation. To be specific, the work is intended to achieve the following objectives:

a. To determine the impact of the existing laws on women in Southern Kaduna;

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b. To ascertain whether the customary law has changed in view of the impact of statutes and case laws and civilization in Southern Kaduna.
c. To ascertain whether the change is welcomed and enforced by families and communities in Southern Kaduna..
d. To examine the challenges, if any, associated with the right of women in relation to property in Southern Kaduna custom.

1.4 Scope of the Research

This research work covers the southern part of Kaduna as a whole. However, due to the diverse tribes and ethnic groups in that area, this work is set to divide the entire southern Kaduna into four zones, and then select one ethnic group from each zone to represent that zone. These selected tribes are Jaba, Bajju, Atyap and Gbagyi. Also, this is also due to the similarities of cultures. At the end of the work, these four selected ethnic groups will cover or represent the entire southern Kaduna. The field of Fundamental Right is an integral part of this research and it covers many subject matters, including and not limited to the right to life[10], dignity of human person[11], Right to Peaceful Assembly and Association,[12]Right to own immovable Property[13], Freedom from Discrimination[14], among other rights, however the focus of this work will be mainly on two of these rights namely the right to own immovable property and the Freedom from Discrimination. This research is governed by customary law and statutory land laws. Asides Customary Law, the Statutory laws that will guide this research include the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Evidence Act, Land Use Act, regional laws like the African Charter on Human and People's Right and its Protocols, Universal Nation

[10] Section 33 of the CFRN, 2011 (as amended)
[11] Section 34 of the CFRN, 2011 (as amended)
[12] Section 40 of the CFRN, 2011 (as amended)
[13] Section 43 of the CFRN, 2011 (as amended)
[14] Section 42 of the CFRN, 2011 (as amended)

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Convention on the Elimination of all kinds of Discrimination against women, 1979, Human Right Charter, ICCPR and ICESCR.

1.5 Literature Review

Generally, property rights of women are contained by various literature. However, the literature that focuses on the property rights of women in Southern Kaduna are very scanty. Some other sources discuss the property rights of women generally where they state what obtains in African or Nigerian Customary Laws.

To begin with, Ndulo's[15]book on "African Customary Law, Customs, and Women's Rights" deals with the general African customary laws. To Ndulo, a typical African country, the great majority of the people conduct their personal activities in accordance with and subject to customary law. He also believes that customary law has great impact in the area of personal law in regard to matters such as marriage, inheritance and traditional authority, majorly because it developed in an era dominated by patriarchy which accounts for the fact that some of its norms conflict with human rights norms guaranteeing equality between men and women.[16] He recognised the role of legislation in reform, and at the same time, argued that the courts have an important role to play in ensuring that customary law is reformed and developed to ensure that it conforms to human rights norms and contributes to the promotion of equality between men and women.[17] The guiding principle should be that customary law is a living law and cannot therefore be static. It must be interpreted to take account of the lived experiences of the people it serves. This work is very relevant to this research in that it explores general sources of African customs, which are similar to the customs under study with certain modifications depending on

[15]Muna Ndulo, *African Customary Law, Customs, and Women's Rights*, Indiana Journal of Global Legal Studies 18:1,Cornell Law Faculty Publications Faculty Scholarship, 1-1-2011, p. 87

[16] This is the reason why some customs till date still see women as Second Class Citizens to men in the community, particularly under Nigerian customary laws.

[17] Ndulo, p.87

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the area. The Nigerian aspect of Ndulo's work is the consideration of the cases of Mojekwu v. Ejikeme,[18] Edet v. Essien[19], and Mojekwu v. Mojekwu[20] which will also form part of our considerations in doing justice to the subject matter of this desertation. The above notwithstanding, Ndulo's work is focused specifically on Nigerian customs, nor are the Nigerian customs referred to and listed in his work connected with the customs under study in this essay.

Kutsuati and Morck[21] have a more specific reference in their working paper of the National Bureau of Economic Research, tagged the "*Family Ties, Inheritance Rights, and Successful Poverty Alleviation: Evidence from Ghana"*, despite the fact that they focused on Ghana. They observed a brief background on traditional inheritance rules in matrilineal and patrilineal lineages, among others[22].

In as much as the work may be relevant to certain particulars of family, particularly some general customary views on inheritance, where for example it relates to land, the work diverts its attention, not only from women but also from property rights in Ghana. The area of

[18] [2000] 5 NWLR 402, where the court held that the *Nrachi* custom of *Nnewi* that enabled a man to keep one of his daughters unmarried perpetually under his roof to raise issues, more especially males, to succeed him. With the custom performed on a daughter, she takes the position of a man in the father's house."71 The court of appeal held that the custom was discriminatory and therefore inapplicable. See Ndulo, Opcit. Pp. 102

[19][1932] 11 NLR 47.

[20][1997] 7 NWLR 283. This case is relevant to the subject matter of this thesis as, in that case, the Oli-Ekpe custom of Nnewi was considered, where, if a man dies leaving male issue, the male child inherits the deceased's property. However, if the man leaves no male issue, the man's brother will inherit his property. If the male issue who survives the father dies, leaving no male issue, the father's brother inherits the property, and on it goes along the male line only. In this case, the son of the deceased's late brother inherited the property of his relation to the exclusion of the daughter of the deceased. 03 The Nigerian Court of Appeal found the Nigerian custom that effectively prevented female family members from inheriting property repugnant to the principles of natural justice, equity, and good conscience. 104 The court held that all human beings are born into a free world and are expected to participate freely, without any discrimination on grounds of sex.

[21] Edward Kutsoati and Randall Morck, NBER Working Paper Series, *Family ties, Inheritance rights, and Successful Poverty Alleviation: Evidence from Ghana*, Working Paper 18080, National Bureau Of Economic Research, 1050 Massachusetts Avenue, Cambridge, MA 02138, May 2012, <http://www.nber.org/papers/w18080>, Accessed on the 9th August, 2014

[22] Ibid pp.4

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concentration of their work is how family ties, inheritance rights influence successful poverty alleviation in Ghana.

Much of sub-Saharan Africa, according to them, understand the concept of family beyond its conjugal members. A lineage, or extended family, is a far larger web of relationships in which all members have a common ancestor, either male or female.[23]

One's relationship with members of one's extended family may be as important as, and in some cases, more important than, one's relationship with one's spouses and children.

They view the actual importance of extended families in any given context as an empirical question and they also explored how inheritance rules in the two distinct Ghanaian system of defining extended family membership interact with formal legal inheritance rule to affect asset accumulation during marriage and the economic situations of widows and their children.

The duo also surveyed widows about the extent of support from their lineages, and their access to economic (money, education and healthcare) and social support. Widows who acknowledge closer ties with members of either their own or their spouse's lineage report more support, as those who inherited via a legal will and also complements a growing empirical literature on the economics of the family, and on the importance of inheritance rights in developing counties. Be that as it may, the work is inadequate in addressing the purport of this dissertation as it places heavy reliance, not specifically on customs but on legal frameworks outside the customary principles in rural communities as we shall be doing this work.

It is not in doubt that the African Women Protocol[24]to the African Charter on Human and People's Right is the most robust legal framework for the protection of the rights of women,

[23] Ibid

[24] African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981

particularly under the various native laws and customs available in Africa. In most cases, these customs are repugnant to natural justice, equity and good conscience and have to be tested in the open court to declare the custom as such. However, the entry into force of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, marked the culmination of years of lobbying for a document which would promote and protect the human rights of the continent's women by African women's rights advocates. Banda's commentary provides a brief historical overview of the process leading up to the adoption of the Protocol by the African Union in Maputo.[25]

Their analysis shows that the African Women's Protocol, in line with both CEDAW[26], 1979, and the African Charter, 1981, contains civil, political, socio-economic and cultural rights. Like CEDAW, the preamble notes the failure of states to promote and protect women's rights, notwithstanding the existence of many human rights instruments enjoining them so to do. Its definition of discrimination is closely modelled on that found in Article 1 of CEDAW.[27] Banda's work is purely based on the African women's protocol as it analyses its provisions. The Protocol required 15 ratifications to bring it into force and Nigeria is among the first states to ratify the protocol, among other states such as Benin, Cape Verde, Comoros, Djibouti, e.t.c. blazing a trail: The African Protocol on Women's Rights, if it Comes into Force will no doubt be relevant to this research work in exploring legal protection options open to women in the light of international legislations without specific reference to any Nigerian or more specifically Southern Kaduna customary practices.

[25] Banda F. Blazing a Trail: The African Protocol on Women's Rights Comes into Force, *in Journal of African Law, Vol. 50, No. 1, Published by Cambridge University Press on behalf of the School of Oriental and African Studies, (2006)*

[26] Committee on the Elimination of All Forms of Discrimination against Women

[27]Discrimination against women' means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life

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Esimai[28] also appraises the African Women's Protocol but did a convergence of local and international law, and particularly perceived the Protocol as an offshoot of the Convention on the Elimination of All Forms of Discrimination Against Women and some other regional legislations. Esimai appraised family law in the Protocol on the Rights of Women in Africa and compared the Protocol to its predecessors and contemporaries. She opined that the African Women's Protocol includes more specific family law provisions than the Asian, Inter-American, and European regional laws dealing with women's rights in the sense that it sets a legislative agenda, along with periodic reporting requirements before a commission to document steps taken by a member state to comply with the Protocol. The work, "*Convergence of Local and International Law: Family Law in the Protocol on the Rights of Women in Africa"* is also focused on the African Women's Protocol. The aspect of Nigerian economy discussed separately in her article was only where she showed that the growing dominance of foreign NGOs and international organizations in Africa has fueled neo-colonialist charges. Today, African ministers and heads of state hold talks with international organizations and NGOs where key determinations are made (in Nigeria, this is commonly referred to as the high-level negotiations in fancy hotels), but no deliberations take place at the grassroots (just as the family law provisions in the Maputo Protocol were decided and handed down). People at the grassroots are largely unaware of the specifics of the high level negotiations, and those who disagree with its scope.[29] Esimai's Convergence of Local and International Law: Family Law in the Protocol on the Rights of Women in Africa is indeed a very rich research work on the inter-relationship between the African women's Protocol and other International and regional Legislations

[28] Esimai Chinwe, *The Convergence of Local and International Law: Family Law in the Protocol on the Rights of Women in Africa* in Proceedings of the Annual Meeting (American Society of International Law), Vol. 101(March 28-31, 2007), 135

[29] Ibid at pp 137

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protecting the rights of women globally, but unfortunately, does not relate to the Nigerian rural customs, particularly those of the Southern Kaduna people which this essay seeks to address.

Rural communities in Nigeria, not only in Southern Kaduna have their various customs and practices which are usually discriminatory against women and this discrimination creeps into their fundamental right to own and possess land in without them realizing they are by law entitled to property rights. ***Ssenyonjo***[30] in his article examines the relationship between culture and women's human rights, and makes some recommendations for the effective realization of these rights. He observed that despite the ratification by African states of several human rights instruments protecting the human rights of women in Africa, and the solemn commitment of the African states to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to experience human rights violations[31]. Most African women are denied the equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination. He added that many women in Africa experience distinct forms of discrimination due to the intersection of sex with such factors as race, language, religion, political and other opinion, national or social origin, property, birth, or other factors, such as age, disability, marital, refugee or migrant status, resulting in compounded disadvantage.

Also, in the article *Culture and the Human Rights of Women in Africa: Between Light and Shadow*, Ssenyonjo revealed that women's subordination in the family and society constitutes serious obstacles to women's enjoyment of their human rights. Some of these cultures are enforced through (criminal) legislation. He made Nigeria a reference point as a country

[30] Manisuli Ssenyonjo, *Culture and the Human Rights of Women in Africa: Between Light and Shadow*, in Journal of African Law, Vol. 51, No. 1, Published by: on behalf of the Cambridge University Press School of Oriental and African Studies (2007), 39
[31] Ibid

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where the Penal Code permits husbands to use physical means to chastise their wives as long as it does not result in 'grievous harm'. This was defined as loss of sight, hearing, power of speech, facial disfigurement or life-threatening injuries.[32] He added that in more traditional areas of Nigeria, the courts and police have been reluctant to intervene to protect women who have formally accused their husbands of abuse if the level of alleged abuse did not exceed the customary norms of those areas. This denies women in Africa the opportunity and the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies, not only at the local level but even at the state and Federal level at large.

He also considered the case of Mojekwu v. Ejikeme[33], where the Supreme Court upheld the decision of the Court of Appeal, it was shown that domestic courts can enforce the human rights of women in Nigeria[34]. The culture contended in that case involves the performance of a ceremony whereby a man could keep one of his daughters perpetually in his home unmarried in order to care for the children, especially males, to succeed him (and thereby perform 'women's traditional role'), but with the reliance upon Article 2 of the CEDAW, the Nigerian Court of Appeal found the custom to be discriminatory on the basis of sex and in violation of the right to marry and women's equality rights. The Court stressed the importance of eliminating discriminatory customary practices in order to give international human rights practical effect.

Ssenyonjo's work is one of the few works that have made specific reference to the rights of women in Africa, including their property rights, but he admits in his work that after all done in his article, much remains to be done to realize the human rights of women in Africa, hence, the essence of this paper to address certain issues of Property rights violation of women in Southern Kaduna part of Nigeria.

[32] Ibid
[33] SUPRA
[34] Ssenyonjo opcit. at 61

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White's [35]work is on the right of women as encapsulated under the CEDAW, without any specific reference to the African Charter on Human and peoples Right which was adopted in Nairobi since 27th June, 1981 and which entered into Force on the 21st October, 1986; not to talk of the Protocol to the Charter, i.e. The African women's Protocol which came into force about twenty eight years after. This might account for the reason why the African Women's protocol is not made a point of reference in the article but another reason for the dimension employed in this article is the fact that it is targeted at the rights of women in the United States of America and the effect of the protection in line with what obtains globally on protection of rights of women. This work is not African based and has no customary flavor in it to warrant any justification for an opinion that the right of women in local communities are covered there under and to associate same with the property rights of women in Southern Kaduna which is sought to be addressed in this thesis.

The aspect of this work that connects it with the Property rights of the Southern Kaduna women is the discussion on CEDAW. CEDAW prevents and seeks the elimination of "all" forms of discriminations against women who belong to countries that have signed and ratified the Treaty and which includes Nigeria.

Ajayi and Olotuah's[36] article is one of the most important article in the series of articles read in the course of research on the subject matter of this thesis, majorly, because it is one article that really addresses though not in explicit terms, the property rights of women in Nigeria. This is because of its specific reference to Nigerian customs. According to the authors, in many African societies, there are customary laws that are oppressive to women. The paper examines some cultural practices in Nigeria that violate women's property rights both in paternal and

[35] Martha White, *Protecting the Human Rights of Women* in Human Rights, Vol. 22, No. 4, Published by: American Bar Association, (1995) pp. 5
[36] Ibid

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matrilineal families. It also appraises ways of preventing various forms of violation of women's property rights from girlhood to widowhood, citing cases from some ethnic groups in Nigeria as it discusses discrimination in the form of non-inheritance of property from parents, loss of matrimonial property due to divorce, disinheritance and physical ill-treatment of widows[37]. The briefing by the duo proffers recommendations to change the biased cultural attitudes against females, strengthen the laws that support property rights of women and provide legal literacy and support for women, especially widows, whose property rights have been violated.

They also orate that different forms of human rights violation, especially violation of property rights, exist in many traditional societies in Africa, and have become accepted as the norm due to the prevalent attitudes of male dominance and female subordination[38]. According to United Nations Human Rights Resolution (2005), human rights are universal, indivisible, interdependent and interrelated. Also, women's equal ownership, access to and control over land, and the equal right to own property and to adequate housing contribute to the full realization of human rights[39].

Another very relevant aspect of the research of Ajayi and Olotuah is where they stated that African women have especially been deprived of a number of things, merely because they are women and women's dependence on their fathers or husbands has always been greatly exploited by violating their rights to own real property such as land and buildings.[40] This, to the duo, might perhaps be the reason why the majority of the world's poor are women. Since pre-

[37] This perhaps has culminated into the recent move of the Nigerian government to pass the *Repugnant Widowhood Practices (Prohibition) Bill, 2014* into law to address the seemingly continuing ill-treatment of widows, particularly under our customary laws.

[38] P.66

[39] Ajayi A. M. and Olotuah A. O. Violation of Women's Property Rights within the Family in *Agenda: Empowering Women for Gender Equity*, No. 66, Gender-Based Violence Trilogy Volume 1, 1: Domestic Violence, Published by: Agenda Feminist Media, (2005), pp. 58

[40] Ibid

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colonial times, the role of men and women in Nigerian societies has always been clearly defined. Cultural and social settings have encouraged the belief that men are more adventurous than women and that women are usually seen as docile and subordinate. The violation of women's property rights usually begins in the family, which is a reflection of the larger society. From the time of birth through adolescence and married life to widowhood, it is usually the closest relation who easily violates women's rights by way of restricting her entitlements in the house to certain items and things and forbidding her from inheriting land or landed properties. The briefing of Ajayi and Olotuah therefore focuses on different forms of human rights violations against women in both the paternal and matrimonial families. However, Ajayi and Olotuah beamed their search light merely on the major languages in Nigeria without consideration of any of the Southern Kaduna tribes in their work which we shall be including in this work in explicit terms.

Oyelade's paper examines the paradoxical juxtaposition of the traditional and modern view of the subject "women's human rights in Africa" and see to what extent the modern efforts of equalizing women with men have impacted on the tradition and culture of Africa.

Both men and women are entitled on an equal footing to the full protection of their rights and freedoms because they are human beings. It is evident however, that women as a social category are almost everywhere subordinate to men, although the degree of their subordination varies. This shows that the focus of Oyelade's paper, has from the very start maintained a position on women's right in Africa, which generally shows what to expect in his article. He infact went too far in his work where he stated, though with the prologue "Without sounding blasphemous", that the scriptures are replete with semblances of subjugation of women or infringement on their rights. In justifying his position, he went as far as the very first book of the

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Bible in the creation, Almighty God created the woman from the ribs of the man, which to him is a form of subordination, a sign of inequality.[41]

The focus of Oyebade is majorly to make a case against the presence of women's right in Africa and not on the property rights of women specifically. It also has a general coverage, i.e. Africa and the aspect that really concerns women's right to property is where he opined that women activists and those concerned with gender equality and justice have proved that for more than 48 years now, women continue to be discriminated against in virtually all spheres of life, particularly in the exercise of political power, seeking redress through the legal system, finding jobs with adequate remuneration, establishing property rights, access to education and exercising reproductive rights.[42]

Some other authors who have written on the subject matter of this research include, ***Hon. Justice C. Oputa, A. Oyajobe, Cathy Cabley, and Joy Ezeilo***. These works range from textbooks to conference proceedings authored by the writers, articles and other sources. Justice Oputa in one of his works[43] on the subject matter discussed extensively on the policies and principles of women and child's right. However, the work at first, gave the impression that he is justifying the abuse of women and children's right. His Lordship did not dwell on the actuality of the violations and abuses of these vulnerable set of humans before moving to suggestions on how to curtail these abuses. Effort will therefore be made in this research work to consider some specific instances of the violation of the women and children's right, with specific reference to the Southern Kaduna.

[41]Oyelade O S,Women's Rights in Africa: Myth or Reality, for Dept of International Law, Faculty of Law, Obafemi Awolowo University, Ile- Ife, *P.1*

[42] Ibid

[43] Oputa, C. Women and Children as Disempowered Groups: Women and Children under Nigerian Law ed. Ajibola, P.B. Intec Printers ltd (1989) Ibadan.

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S.M Ngu's[44] work is basically about the Attakar people of Southern Kaduna, but will be relevant for this research because the cultures and traditions of the people of Southern Kaduna are similar, though with varying features and perspectives on cultural, economic, geographical and political matters. Ngu's work however is restrictive as it relates only to the Attakar people and not the Jaba, Gbagyi, Atyap and the Bajjus which this work seeks to explore. Also, S.M. Ngu neither addressed these customary principles of the Attakars from a legal perspective which this work seeks to carry out in the light of the Southern Kaduna customs under study, nor did the author talk on the property rights of the Attakars, which would have been a sort of reference point for our discussion on property rights of the women in Southern Kaduna. This work is set to demonstrate the legal framework of the communities and to emphasize on the property rights of the women in Southern Kaduna as aforesaid ***C.K Meek***[45] also wrote about some ethnic groups in northern Nigeria. He did a good and elaborate work on these ethnic groups but had no particular focus on all the communities under this study. He also did not talk about the rights of women, not to talk of their property rights. This work will therefore address the problem with property rights of women in the four communities under study.

In considering the rights of women and children, Oyajobe A. in her work[46] made comments and gave explanations relating to instances where the rights of children and women are being abused. However, the work is devoid of suggestions as to how to enforce their right and did not discuss specifically the property rights of women and how the customary laws, have become a cog in the actualization of an equality between men and women in the society.

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[44] Ngu S.M. Minority politics and Rural Development in Nigeria, (1994) published by DADA Press Ltd.
[45] Meek C. K., *Tribal Studies in Northern Nigeria*, *Volume one*, Published by, Kegan Paul, Trench, Trubner & Company, 1931
[46] Oyajobe, A., Better Protection for Women and Children under the Law: Women and Children under Nigerian Law ed. Ajibola, P.B. Intec Printers ltd (1989) Ibadan

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The reference to the above authors is by no means exhaustive of the writers on the subject matter of this research work.

1.6 Research Methodology

This research is literature-based and will adopt the empirical approach and a little of analytical, descriptive and prescriptive approach in addressing the problem of the research. It involves analysis of primary sources which include statutory laws and case laws, including Bills proposed to be passed into law which will be very relevant to this research. The Secondary sources which contain opinion of writers in textbooks, published and unpublished papers, research publications, articles on the internet, theses, reports, and law reviews will be looked at. Papers presented at workshops, seminars and conferences will be consulted. These diverse sources sufficiently capture the state of the rights of women, particularly the aspect of property ownership and possession and give in-depth analysis of the strengths and weaknesses of property rights of women as it obtains in Southern Kaduna region of Kaduna State in Nigeria.

1.7 Justification

Under the Native laws and customs in Nigeria generally, women in their matrimonial home were regarded as mere domestic chattels that are capable of being owned just like any other property, such that their ownership can also be transferred from one person to another. In Igbo land, just as we have in most and particularly the Southern Kaduna tribes under study, women generally do not acquire immovable property and their contractual capacity are limited to movable property alone. Except in cases of acquisition by sale, woman in Southern Kaduna generally cannot own land in her own right under customary law. She usually has custody of a piece of land to cultivate with the permission of her husband, otherwise, she holds in trust for her male children, hence the need for a platform like this thesis to address these limitations and

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barriers to property rights of women, particularly in the rural communities of Southern Kaduna where customary law is still extensively prevalent[47].This research work will be of immense benefit to women who are victims of human rights abuse in Southern Kaduna, in Nigeria and indeed all over the world. Many organizations are taking up issues of women's right violation on an aggressive note lately and this research work will facilitate their protection of women's right generally, including their right to acquire, own, possess and deal with immovable property, particularly in the rural communities where customary practices are the order of the day.

1.8 Organizational Layout

This research work is made up of five chapters with sub-headings discussed there under. **Chapter One** deals with the general introduction under which the Statement of the Problem, objectives of the Study, scope and method as well as the usefulness of the research are stated. It also discusses a vivid review of the Literature on the subject matter under study and states the justification of this research.

Chapter Two, is a historical background of the communities under study. The chapter discusses the Characteristics of Customary Law and the proof of Customary Law, under which are also discussed.

Chapter Three is essentially devoted to the consideration of the nature and scope of Women's right to property in Nigeria, under which the Legal framework for the protection of women's right to property in Nigeria, together with the Modes of acquisition of property and the Interface between the Right to property under Common Law and under Customary Law. **Chapter Four** women's right to inherit property under customary law of Southern Kaduna in Kaduna State is discussed under which the policy and legal framework on women's right to property under Nigerian Laws is juxtaposed with the Customs of the Jaba, Bajjus, atyap and

[47] ibid

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Gbagyis Customs of Southern Kaduna, together with decisions of superior courts in Nigeria. Certain Statutory regulations and the Bills proposed to be passed into law directly relevant and related to the subject matter of this thesis will also be considered and extensively scrutinized.

Chapter Five discusses the critique of the right of women to inherit land, under which Regional laws, municipal laws, international laws are all considered.

Chapter six draws the curtain to this research work with summary, findings, recommendations and conclusion.

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CHAPTER TWO:

CHARACTERISTICS AND PROOF OF CUSTOMARY LAW

2.1 Introduction

The focal purpose of this chapter is to discuss the characteristics and proof of customary law in Nigeria, in relation to the history and sociology of the communities under study. It is to examine the political settings of these ethnic groups without which the understanding of the laws and practices may not be possible. It will also examine the cultural background and socio-economic activities of these ethnic groups, and their economic activities.

The chapter examines the common traditional practices of the Jabas, the Bajjus, the Atyaps and the Gbagyis; and the shared features of those practices. It will also scrutinize the standard proof of these traditions and customs; and the effects on psychological behaviors especially towards women in the area under study.

2.2 Definitions of Customary Law

The study of this chapter will be incomplete if the various definitions of customary law is not looked into.

Definitions of customary law will therefore be taken from i. statutory point of view ii. as viewed by various authors; and iii. as viewed in case laws:

i. Statutory point of view: The customary court of Anambra state defined customary law as, "A rule or body of rules regulating rights and imposing correlative duties, being a rule or body of rules which obtains and is fortified by established usage and which is appropriate and applicable to any particular cause, matter, dispute, issue or question.[1]

[1] Section 2, Customary Courts Law Cap. 49 Revised Laws of Anambra State of Nigeria, 1979.

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According to the Evidence Act, Custom is defined thus, "Custom is a rule which in a particular district, has, from long usage obtained the force of law."

ii. As viewed by various authors: According to Obilade[2], "There is no universal definition of customary law. In fact, different terms such as 'native law and custom', 'native law', 'native customary law' and 'local law' have been used interchangeably to refer to this class of laws." He went ahead to attempt a definition describing it as: "a body of customs and traditions, which regulate the various kinds of relationship between members of the community in their traditional setting."[3]

According to Malemi, "Customary law is law which evolves from the established practices, customs and way of life of a people."[4]

T. O. Elias defined customary law as, "A body of customs accepted by members of a community as binding upon them."[5]

According to Niki Tobi, "Customary law is the customs, rules and traditions which govern the relationship of members of a community"[6]

iii. As viewed in case laws: Some Judges have also attempted a definition of customary law. A few of them shall be considered here. In Owoniyi v Omotosho,[7] Bairamian FJ defined it as "A mirror of accepted usage, among a given people."

In Aku v Aneku,[8] Ndoma-Egba JCA defined it as:

[2]Obilade, A.O. The Nigerian Legal System (2001), spectrum Ibadan, p. 114.
[3] ibid
[4] Malemi, E. Nigerian Legal System (1999), Grace Publishers, p.52.
[5] Elias, T.O. The Nature of African Customary Law, Manchester university Press, 1956, p.29
[6] Tobi, N. Sources of Nigerian Law, MIJ Professional Publishers Limited, 1996, p.104
[7] (1961) 1 All NLR 304.
[8] (1991) 8 NWLR pt 209 p.280 at 292

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> "The unrecorded tradition and history of the people, practiced from the dim past and which has 'grown' with the 'growth' of the people to stability and eventually becomes an intrinsic part of their culture. It is a usage or practice of the people which by common adoption and acquiescence and by long and unvarying habit has become compulsory and has acquired the force of law with respect to the place or the subject matter to which it relates."

And in Oyewunmi v Ogunesan,[9] Obaseki JSC, in defined it as: "Customary law is the organic or living law of the indigenous people of Nigeria, regulating their lives and transactions…"[10]

From the above definitions, all authors agree that customary law is a custom which is accepted as binding by a people.

2.3 Characteristics of Customary Law.

Customary Law, as the name implies, is based on the laid down customs and tradition of a set of people, with shared history, anchored on common belief system with accepted and recognized institution. Customary Law as distinct from Common or Civil Law, has unique features separating it efficiently from other recognized and codified systems of law. For a rule of customary law to be applicable, it is required to meet these basic criteria necessary for its validity and acceptance. Some of the characteristics area:

2.3.1 OLD USAGE. Customs are usually tradition practices of any group of people or tribe that have stood the test of time from immemorial. Those long-established practices handed over from one age to another which a particular group of people have acknowledged as a standard guiding rule and regulation on their daily lifestyle; encompassing both private and public endeavours. These traditions were transmitted from generation to generation, without anyone claiming sole authority to them.

2.3.2 GENERALLY RECONGISED. Not all old practices are group as custom of a group of people. Most traditions not accepted by the people are categorized as folklores, and not

[9] (1990) 3 NWLR pt 137 p.182 at 207 SC.
[10] Malemi, E. Nigerian Legal System (1999), Grace Publishers, p.53.

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recognised as customs. It must enjoy general application among the people as a binding custom. In addition to being recognised because of old usage of such practices, they must be publicly and generally recognised by the local governing authority, respected and obeyed by the people as authentic.

2.3.3 UNWRITTEN. Another major characteristics of customary law is that they are mostly not written nor inscribed inside any form or material. They are always passed down from progenitors and adherents thereof. The reason might not be far from the fact that their systems of writing has not been sufficiently developed to cater for the documentation and codification customary traditions and practices. It is usually not compiled, codified nor legislated in the form of statute.

2.3.4 BINDING. Customary laws are recognized as binding in the day-to-day dealings of local communities which they belong. The recognized custodians and interpreters of native customs and tradition are the elders in that society. Based on the nature of customary practices, leaders of the community are authorities on customary law and ethics; and also serve as a kind of 'consultants' in customary and traditional based issues, including law.

2.4 Proof of Customary Law

Evidence Act[11], listed how customary practices and traditions can be proved as follows:

"Section 16

> *(1) A custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence.*
>
> *(2) The burden of proving a custom shall lie upon the person alleging its existence.*
> *17. A custom may be judicially noticed by the court if it has been acted upon <u>once</u> by a superior court of record.*

[11] **Sections 16 – 19, 2011 (as amended)**

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> *18. (1) Where a custom cannot be established as one judicially noticed, it shall be proved as a fact.*
>
> *(2) where the existence or the nature of a custom applicable to a given case is in issue, there may be given in evidence the opinions of persons who would be likely to know of its existence in accordance with Section 73*[12]
>
> *(3) In any judicial proceeding where any custom is relied upon, it shall not be enforced as law if it is contrary to public policy, or is not in accordance with natural justice, equity and good conscience.*
>
> *19 Every fact is deemed to be relevant which tends to show how in particular instances a matter alleged to be a custom was understood and acted upon by persons then interested."*

From the forgoing sections of the Evidence Act, Customary law and customs can be proved through the following way:

2.4.1 Judicial Notice

It is a well-known legal principle and rule that, custom or customary law need no proof if it enjoys such notoriety as to be judicially noticed. This principle was made in the *locus classicus* case of **Lewis v. Bankole**[13]**.** It is now a trite law and as evidenced in the complete scope of judicial decisions, customary practices can be proved by the extent such custom and traditions are judicially noticed[14]. In **Giwa v. Erinmilokun**[15], the court held that native law and custom is a matter of evidence to be decided on the facts placed before the Court in each particular case unless the custom has acquired such notoriety and has been so frequently followed by the Courts that judicial Notice would be taken of same without evidence required in proof. Native law and custom or customary law are matters of evidence and must therefore be proved in any particular

[12]Section 73 of the Evidence Act provides for the opinion as to existence of "general custom or right" when admissible.
[13] (1908) 1 N.L.R. 81
[14]See also the ratio of Bello C.J.N Olagbemiro V. Ajagungbade III (1990) 21 N.S.C.C. (PT. 11) 182 at 195 / (1990) 3 N.W.L.R. (PT. 136) 37 at 59.
[15](1961) All N.L.R. 294

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case unless they are of such notoriety and have been so frequently followed or applied that judicial notice ought to be taken without evidence required in proof thereof.[16] In other words, customary practices and traditions need no proof if it has been judicially noticed and frequently applied by Courts. Judicial notice is therefore an alternative method of proving customary law.[17]**Section 17 of the Evidence Act**[18] in further explanation of the level of notoriety required of such customs, states that ***"a custom may be judicially noticed when it has been adjudicated upon once by a superior court of record"***

2.4.2 Registered Declaration

This is a declaration of the tradition, customary law and usage pertaining to the customary practices of the people[19]. In **Adigun v. A.G. Oyo State**[20], in explaining what a registered declaration means, the Court was of the opinion that ***"if there is a registered declaration of the customary law regulating the appointment of a chieftaincy title, the evidence is straight forward and would consist in the production of the registered declaration in which case a single would suffice."***

However, though a registered declaration of a customary practice will obviate the necessity of proof; it is not an exercise of legislative power[21]. This simply means that registered declaration is not akin to a law enacted by the legislative arm of the government. Nevertheless, where a registered declaration is proved to be contrary to the customs and traditions of the people, the Court can set aside such registered declaration.[22]

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[16]Per Edozie J.C.A in Yaktor V. Gov. Plateau State (1997) 4 N.W.L.R. (pt. 498) 216 at 229
[17]Per Obaseki, J.S.C. in Oyewunmi v. Ogunesan (1990) 21 N.S.C.C. (Pt. II) 240 at 250
[18]2011 (as amended)
[19]Oladele V. Aromolaran II (1996) 6. N.W.L.R. (pt. 453) 180
[20](1987) 1 N.W.L.R. (PT. 53) 678
[21]Karibi-Whyte J.S.C in Agbetoba V. L.S.E.C. (1991) 4 N.W.L.R. (PT. 188) 664 at 689
[22]Mafimisebi v. Ehuwa (2007) 2 N .W.L.R. (pt. 1018) 385 at 431, paras E-H

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2.4.3 Facts

Section 18 (1) of the Evidence Act was clear on this when it states; "***Where a custom cannot be established as one judicially noticed, it shall be proved as a fact."***Proof is essential in evidence of customary law, it is extremely important that custom should be strictly proved. Though such proof is not by the number of witnesses called, it is not enough that one who asserts the custom should be the only witness; another witness who is versed in the alleged custom should also testify.[23]Since Native Law and Custom must be strictly proved, it is, therefore, unsafe to accept the statement of the only person asserting the existence of a custom, as conclusive.[24]Emphasizing more on this, the Supreme Court in **Ojiogu V. Ojiogu**[25] held per Onnoghen J.S.C. that it is trite that customary law is a question of fact which must be proved or established by evidence. It should be noted that just as it is trite that he who assert must prove, the burden of proving a custom shall lie upon the person alleging its existence.

However, proof of customary law can be handled differently, depending on the court which the matter is brought before.

i. Proof of Customary Law in a Customary Court: If the native court is situated in the community where the native law is in question, there is no need for proof. This is because, it is assumed that the judges have taken judicial notice of the customs of the land. That was the position in the case of **Ehioghae v Ehioghae.**[26]

ii. Proof of customary law in English Court: This is where the court is not situated where the native law is in question. E.g. the High Court. Here, the general principle of "*he who asserts must prove"* is followed. Unless a custom is

[23]The Queen V. Chief Ozogular (1962) W.N.L.R. 136
[24]Ozogula II V. Ekpenga (1962) 1 SCNLR 423
[25](2010) 9 N.W.L.R. (pt. 1198) 1 at 26, paras E-G
[26] (1964) M.N.L.R. 30.

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judicially noticed, the party contending that it exists has to prove its existence by evidence.

2.5 The History and Sociology of the Southern Kaduna Communities

2.5.1 Jaba

The Jaba Local Government Area covers an area of about 100 square miles in the southern part of Kaduna State in Nigeria. It predominantly occupies a fairly sizeable territory spanning the Local Government Area and Kachia; the headquarters is Kwoi. It is situate on a plateau in an undulating country side which becomes rugged to the south. This area is well-watered in the north by the Gurara River and its main tributaries, are the Rivers Cafzheck, Cap Wenyomi, Cap Kudah, Cap Kafi, Cap Dodu, Cap Gantang, Cap Chori, Cap Dada and many other innumerable streams that drain this undulating area. These rivers become considerable torrents in the wet season.[27]

The river Gurara divides this area into the northern and southern areas. The northern area is predominantly inhabited by the Dung, Kpat, Ngaing, Chorch, Wenyom and Kudah lineages, while the southern area is inhabited by the Daddu, Shambang, Hamduu, Filow and Ham Gwong clans. The famous archeological finding of Nok culture were made in this area. The antiquities recovered at Nok which happens to be one of the villages in the local government include archeulean stone tools, iron workings and terracotta figurines. In this respect, Nok village and Nok culture are of significance in the study of Nigerian history.[28] To the East, are Zangon Kataf and Jema'a Local Government Areas. On the Southern end is Karu Local Government Area of

[27] James I. The Ham and their Neighbourhood: The Ham in History, Jos University Press, (1986) p 54
[28] ibid

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Nasarawa State. The area is bounded to the north by the Adakurturmi, Adara, Karos Netkun. To the east, by the Bajju, Kamantan, and Kagomas and to the west, by the Koros and Gbagyi.[29]

The main ethnic group and the aboriginal inhabitants of the entire local government areas are the Ham peoples-group. They are referred by outsiders as the Jaba. According to their belief, they trace their origin from the southern part of Egypt. They are said to have migrated southward along the Nile valley to the north-east (Chad and Borno) axis, unto their present settlement.[30] Today, the Ham people occupy the whole of Jaba Local Government Area, parts of Kachia and Kagarko Local Government Areas. Apart from these indigenous settlements, there are Ham communities in towns like Panda, Keffi, Kaduna, Kafanchan, GidanWaya, Jos and Karu.

The Ham neighbors call them "Jaba" but their name for themselves is "Ham Njeng" which is the ancestral name of the Ham people or also called by their dialect "Shan Ham". It is assumed to be one of the most ancient and historical settlement of the Ham people. It can therefore be said with some certainty that, the area is situated on a plateau and a very undulating park like area with an escarpment extending for over five miles. To the south, the area becomes rugged, wild and rocky. To the north, the area is more open and the land studded with thick belts of "Kurmis" deep valleys and forests. The people in this area, adopt and tolerate the kind of geographical condition they find favourable to them. This encourage the indigenous people in this area and settlers to produce agricultural products that the crop is best suited for and also features the resistance of the Ham people against foreign invaders.[31]

[29] ibid
[30]Jatau, I.B.H, District Head, Forgei, Kwoi, Jaba Local Government Area, interviewed on 8th March, 2014, at his residence in Fogei.
[31]Temple O. Tribes, provinces, Emirates and State of Northern Provinces of Nigeria, Frank Cass Publishers, London (1965) p124

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2.5.2 Bajju

There are several accounts as regards the historical origin of the Bajju. These are categorized into written and oral accounts.

The written version:

The legend on the historical origin of the Bajju who are also called the "*kaje"* has it that, around Jos plateau, is an area called Hobir; that area is occupied by the Jarawa people. A group broke away from this Jarawa people and migrated south-westwards and settled on a hill called "*tsoknkwon*" that is the group which the Miango people are derived. As time went on, two brothers known as "Zamfara" and "*Awai*" also broke away from the group. They migrated westward. Awai settled on the place called "*Chawai* people".[32]

Zamfara went further and settled at Hurbuang, the place is today called "Unguwan-Tabo" situated just north of Zangon Kataf. Zamfara had a wife called "Zambrang". They had two children. The first one called "Baranzan" while the second child was called "Akad". These two brothers according to the tradition were hunters. On one hand, Baranzan hunted along the riversides, while on the other hand, Akad hunted along the hillsides. After sometime, the two brothers separated. Akad settled on the hills, his favorite hunting grounds. He is the progenitor of the Attakar people which the Bajju called "Batakad". Baranzan settled on an area, which he cleared close to the area where he hunted. The portion where Baranzan cleared and made abode is what the Bajju call "Kazz".[33] The story has it that, the separation of the two brothers was

[32]Sa'ad, A. Colonial rule in Northern Nigeria. In: Ikime, O. (ed.) Groundwork of Nigeria History. Heinemann Educational books (Nig) plc 1980.
[33]Balarabe, B. Nomination for Traditional Council Chiefs for the new Chiefdoms in Kaduna State. June (1995) letter

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occasioned by the death of their father Zamfara at Hurbuang. Baranzan before his death had five children. They are; *Ankwak*, *Tuan*, *Akadon*, *Kanshuwa*, and *Iduang*.[34]

Some written accounts have it that the children of Baranzan were six. The sixth child was the founder of Bayintrungkwai clan.[35] The dominant tradition in Bajju maintains that Baranzan had five children. The sixth *kwai* is said either to be non Bajju who have been assimilated into the area but do not trace their genealogy to Baranzan.[36]The story continues that Baranzan later died and was buried in a place just outside the village of Zonkwa. The place is now known as "Dibzzi" meaning grave.[37] The Hausa who could not pronounce it well named it "Kurmin Bi". It is reported that Ankwak, the first son of Baranzan inherited personal effects of their father. These include a bag (Ndoma), and an animal skin (Antzuwrang).[38]

The oral version:

The oral version of the historical origin of the Bajju has no much difference with the written version. Just as there is difference in the number of children of Baranzan on the written version, so it is with the oral version. It may largely be due to the fact that, all that is written about the people is derived from the same oral sources. However, there are some differences.

One of the dominant stand of the oral information gathered is that the children of Baranzan were five.[39] While the doubt exercised was confirmed that the sixth Kwai claimed by a section of the Bajju is from the Kataf origin.[40]The oral account traced the origin of the Bajju (Kaje) more to the Miango people whom the Bajju still share word similarities. For example,

[34]Doma, B.A. The AgwamJju Palace, Zonkwa: An Exposition of Bajju Tradition, M.Sc. Thesis (unpublished), Department of Architecture, Faculty of Environmental Design, A.B.U., Zaria, (1997) p14
[35] ibid
[36]Bijimi, S.S. Community Centre, Zonkwa, M.Sc Thesis (unpublished), Department of Architecture, Faculty of Environmental Design, A.B.U., Zaria, (1981) p21
[37]Dikko, M.I. Numerous Demand for Creation of Kaje District in Zangon Kataf District (1986) letter
[38] ibid
[39]Habu, D.B. The Bajju People: An Outline in Social Anthropology. Kaduna Monograph (1993) p12
[40]Hogben, S.J and Kirk-Green, A.H.M. The Emirates of Northern Nigeria: A Preliminary Survey of their Historical Traditions. Oxford University Press, London, (1996) p52

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according to the Bajjus, goat is referred to as Bvan in Jju, and Ibvan in miango; Nyon means chicken in jju whereas in Miango, they call Chicken "Inyon". Shoe is Kpatak in Jju and Ikpatak in Miango.[41]All these shows the close tribal affinity the Bajjus and the Miangos share which has extended to their modes of communication in their various areas.

The oral account further made clarifications that the five children were the founders of the five Kwai (clans) found in Kajju. Also, that when Ankwak was inheriting the personal effects of Baranzan, it was agreed that whenever there is the need to meet, Ankwak should call on the remaining four brothers to deliberate on their father's (Baranzan) grave.[42] These are some of the marked differences between the written and oral accounts of the historical origin of the Bajju people.

The Bajju area is made up of five Kwai(s) founded by the five children of Baranzan as mentioned in the early part of this work. These five clans are; Banchuan, Batadon, Agbainbzin, Bayintsok and Baiduang.[43] These five clans in turn consist of various sub-clans. The Kwai headquarters came to be an addition to the sub-clans founded by the above children.

These provided the framework for political action. The family is called by the Bajju "Karyi". The lineage known in Jju as "sod", the sub-clan is called "Kankrang" and the clan is called "Kwai".

The explanation for the above is that Baranzan founded the Bajju area, his children established the "Kwai" and their children established the sub-clans. The present settlement pattern of the "Kwai" are derived from the past and is maintained to date, with the "Bagado" who are the political heads of the "Kwai" and maintained their titles to date.

[41]Hyuwa, D.D., Bvung Anzwrang: A brief Historical Information on Bajju Chiefdom 1996 document p2
[42]Ishaku, G. and Kure, M., Briefs on Bajju Chieftaincy Issue (1999) doc
[43]Kadir I.A., RE-Agwam Bajju a letter with reference number Ref Sec/72 vol. 3/646 (1989)

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Most of the sub-clans are made up of varying number of lineages e.g. the "Katstit" sub-clan of the "Banchuan" clan which is made up of five lineages, the Dibzzi Sub-clan of the Baiduang clan has five lineages. These sub-clans maintain firm control of the lineages politically and socially.

2.5.3 Atyap

The Atyaphave several traditions of origin and migration which are still preserved largely through oral traditions as passed down from one generation to another. Therefore, several traditions of the origin and migration exist of the Atyap.

According to one of the traditions, the Atyap once lived in the Bauchi area from where they migrated to Kano. It is said that from Kano, the Atyap moved southward and in the process, split into two; that is, the Agba'ad and the Minyam, before getting to the present Atyap land. The Minyam passed through Kadara land, while the Agba'ad went through Kargi. The Minyam and the Agba'ad on arrival met the Aku and the Ashokwa already in the area. The traditions however, put it that the Aku and Ashokwa were discovered.[44]

To explain how these two clans were discovered, it is said that, after the Agba'ad settled in their new place, one of the sub-clans of the Agba'ad went on a hunting expedition and accidentally came across the Ashokwa clan performing religious rites by the Kaduna River. When the Ashokwa saw the Agba'ad, they fled in fright. The Agba'ad pursued them for proper identification and when they finally stopped the fleeing Ashokwa, they discovered that they had the same language and even religious rites, so they exclaimed "Ah, these are our brothers".[45]

One version had it that from the hoof marks of the Agba'ad horsemen as they pursued the Ashokwa, sprung the Aku clan. When the Aku emerged, it was discovered that they had the

[44]Dauke, A.B., Zangon Kataf: A Journey of a People. Mangut Publishers, Nig. (2004) P9
[45]Bognet, D.J., A Retired Civil Servant , Interviewed on 16th November, 2013, at his Residence in Garaje, Kafanchan

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same language and religious rites as the other two clans, so they were accepted and thus, the three clans got together to celebrate this discovery. The Ashokwa said to have originated from an ants-hill opened by the hoof of the Agba'ad horsemen. In fact, the Aku clan to date bears the nickname of "Bin chio", which means the relatives of termites.[46]

Another version of Atyap land said that Atyap once lived at Kallah in Kajuru District of Adara land in the present Kaduna State. From Kallah they moved to their present location around 1846.[47]

According to an oral account, the Atyap reached east from Asia or around Ethiopia in Africa or the middle east. Prior to their arrival, the account claimed that from the east, they moved and settled in Chad then their present location (Atyap land). The assertion failed to look into the ethnographic survey.[48]

J.D Nengel asserted that Kargi was founded as an immigrant settlement in Lere town in the 18th century. Therefore, by implication and logical examination, ZangonKataf predates Kargi.[49]

Basically, there are considerable disagreements among scholars about the origin of Atyap. Some accounted that the Atyap migrated from different places to the present place of settlement, while the plausible places once stood firmly that the Atyap never migrated at all from anywhere. Therefore, with all these theory of origin, it is considerate to conclude that, the history of the starting point of Atyap is not certain or fully developed thus, it is tentative.[50]

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[46]Dauke, A.B., op cit P11

[47]Bonat, Z.A., An outline of Political and Administrative History of Moro'a Chiefdom. A Paper Presented at the Moro'a Development Association, Zaria branch, on the 2nd of May, 1992.

[48]Bognet, D.J., A Retired Civil Servant, Interviewed on 16th November, 2013, at his Residence in Garaje, Kafanchan.

[49]Nengel, J.G., Intergroup Relations in the Pre-colonial Politics of Kaura and Pengana Highlands of central Nigeria, Ph.D Dissertation (unpublished), Department of Political science, Faculty of Social Sciences, University of Jos, (1989) p298

[50] Ibid p299

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However, one can be on the assumption that these legends do not have any scientific evidence. Moreover, others agreed that there exist the disposal point of all mankind. Atyap have in their present place of settlement many centuries ago, so much that they lost their memory on when they arrived and where they come from. From all available evidence, the Atyap did not migrate from far distance, the migration might be from within. Thus, if the Atyap migrated from somewhere, do we still find remains of the Atyap where they left and settled in their present place?

2.5.4 Gbagyi

The way in which the Gbagyi are scattered over wide areas in the central region of Nigeria makes it rather difficult to give a distinctive geographical description of the Gbagyi "territorial area". As a matter of fact, apart from being scattered over wide areas, the Gbagyi live in districts regarded as theirs, considerably mixed with other ethnic groups, some of whom are as old as or even older than the Gbagyi in such districts and still maintain their different identities.

Gbagyis are found in various parts of the country, but reference will be made to the ones in Kaduna State. They are found in Birnin Gwari, Chikun, Kagarko, Kaduna North, Kaduna South, Igabi and Kauru Local Government Areas. The Gbagyi have two dialects. The Gbayi and Gbawyi/Gbari[51]. People here derive their livelihood from the environment in similar ways from the environmental wealth and thus have strong cultural infirmities. The most conspicuous physical characteristics of the area are the topography and drainage with ranges of hills of base granite outcroppings.[52]

[51] Gordon. R.G jnr, Ethnologue: Languages of the World, 15th ed. Dallas tex, SIL International, Online version, http://www.ethnologue.com.
[52]Filaba, M.A and Gojeh, L.A, Koro and Gbagyi Subgroup relations, Gabdel integrated services ltd, (2008) P6

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It is reported that the Gbagyi claim to have migrated westward, being driven out by the Beriberi in their old home (Borno). The Gbagyi came originally from Borno and are Beriberi in origin and speak Beriberi.[53] According to Ishaku Dikko, "It is believed that Gbagyi lived in Saudi Arabia and later migrated into Africa. When Islam was brought to Mecca and Medina, many people began to change their religion. But the Gbagyi continued with their idol worship when the Islamic religion spread in the country, the Gbagyi left Saudi Arabia. They crossed into Africa into small groups. They later came to Borno where they settled for many years with the Kanuri-Beriberi and other groups".[54]

Many Gbagyi strongly believe this, and buttress the argument with the fact that the Gbagyi and Kanuri have common facial marks and other cultural practices. Despite the cultural similarities between the Gbagyi and the Beriberi, their tradition of common origin is not supported by linguistic evidence.

2.6 Cultural Background of the Communities under Study

Cultural values are the cherished traditions and ethos, which are desirable to their society and taken as normative civilization. They are expectations and practices that make life meaningful and anticipation of better tomorrow. The values are ideals making people to be responsible, initiative, conform to orient the younger ones to cherish the attitude.

2.6.1 Jaba

Ancestral worship was used to cover all forms of cults. Ancestor's cult and worship loomed large in the anthropological image of the Ham people. Ancestors among the Ham were vested with mystical powers and authority. They retained a functional role in the world of the

[53]Naley, E. The Stealing of African to the U.S and the Perpetuation of European Cultural Hegemony, in: Abdullahi, M. (ed). Arewa House, World Conference on Slavery and Society in History, 26th -30th March, 1990. Kaduna Arewa House.
[54]Dikko, I.B, Gbagyi/Gwari culture , Ebenezer publishers, Kaduna (1989) p16

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living they were ultimately involved with the welfare of the Ham kins group. This linkage was structured through Ham authority figures, the elders of the Ham (Shakpo), clan heads (Sheing Zhu), lineage heads (Sheing Harro), juju priest (Kpoku), family heads (makikehharro). These Ham chosen elders were the representatives of the ancestors and mediators between the ancestors and the Ham people. Thus close affinity between the Ham elders and the Ham ancestors conferred on the Ham elders some power and authority. Elders eventually emerged as the intermediaries between the family, the lineage, the clan and the community and the unknown forces that control the universe.[55] These names listed forms the social organization.

The elders (Shakpo) are responsible for propitiation of sacrifice since neglect was likely to bring about punishment. Each Ham family had a family shrine (Garbeik) where offerings of bear (Kam), chicken (Nyu), goat (Tzo), and grains (Gyeghi) were made. Ancestral family spirits could only be worshipped through intermediaries of these elders.[56]

The clan heads (Sheing Zhu) regulates on issues affecting marriage, inheritance and crisis situations. At the village level, the clan heads performed functions primarily limited to economic, social, recreational, political and military matters.

The lineage consist of some family and some clans who are related in any way, either through migration or marriage. The lineage head (Sheing Harro) is chosen to represent them in the society. They organize themselves to share their belongings according to what every family and clan has gotten to avoid class distinction.

The juju priest (Kpopku) performed the functions of Ku cult which portrayed the relationship that exist between religion and the Ham people. It is looked upon as the only supreme body capable of making theoretical interpretations and explanations of their world.

[55] James I. The Ham, their Political and Cultural History. Jos University Press limited, Jos (1997) p58-59
[56]Shunom, G., A Civil Servant, Interviewed in his Residence at Barnawa G.R.A, Kaduna, on the 8th March, 2014

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They made the tribe to believe so much in him that he has a linkage between spiritual forces and the Ham community. They made initiation of the youth to prepare them for manhood which is done in the forest and surrounded by secrecy. They also recognized and rewarded excellence in agriculture, hunting and gathering which is called the Dahn initiation[57].

The family and heads (Makikeh Harro) are the household in most cases naturally expanded to an extended family unit known as (Harro). The extended family consist of two or more families of different generations united by consanguine kinship and share common residence under a single head. It comprises a patriarchal head, wife or wives, his married sons and their wives and children, his unmarried children and infrequently also, his younger brothers and their collateral relatives with their wives and offspring. They all function as part of the society and community.

The head or the father and also the eldest son represents the family. In issues concerning the family and society in the family as a whole tries to avoid things that will bring problem to them and also help out the poor family who are in need of food. They also contribute during festival and ceremonies.[58]

There was no class distinction and social harmony was maintained. Women knew their status and had no fear of being superseded. The first wife enjoyed her superior position in the family known as (Zhu Har) which means 'mother of the house". Men allocate their wives their own land, livestock and even adopted children if a wife happened not to have any child. Thus, husbands treat their wives equally so that a married woman will not feel humiliated through any manifestation of favoritism if the man has more than one wife.[59]

[57] ibid
[58] James, I., op cit pp68-73
[59]Shunom, G., Op Cit

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2.6.2 Bajju

The Bajju have a wide range of socio-cultural activities, most of which are synonymous to other ethnic groups in southern Kaduna. Some of the activities include marriage, festivals, exogamy, religious taboos, and their legal system and so on.

Marriage: Marriage in Bajju is of two types. The polygamy and the monogamy. There are four main events involved in the process of marriage.

The first event is called "hwun". This is mostly done immediately or even when the prospective mother in-law is pregnant and the sex of the baby is not known. This does not preclude others from showing interest too. When hwun is made, there is a gift either in the form of a ring or anything valuable.[60]

The second event is the presentation of bride's gift. The bride's gift is mostly a hoe. A man who does not present bride gift is liable to lose his children if the woman leaves his house with the children as it is considered disgraceful. Apart from the bride's gift, a mandatory present is usually given to the mother of the girl. She is given to deal with it the way she desires while the bride's gift is for the family. The girl's mother's gift is usually a goat or fowls.[61] To present the bride's gift and negotiate generally, the family seeking the wife appoints an intermediary "adad" (which means bridge) who would be doing the visits and be informing the man's family on every development. On an appointed date, the intermediary in company of some elders from the man's family visit the girl's family and present the bride's gift. The acceptance of the gift further confirms the girl's family willingness to give their daughter for marriage.

The third event is the formal announcement. By this, neighbors and kinsmen are invited. At this meeting, an elder from the girl's family, usually the oldest, formally informs the

[60]Habu, D.B., The Bajju People: An Outline in Social Anthropology. Kaduna monograph p27
[61] Ibid.p29

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community of their daughters impending marriage and the people to be giving.[62] The boy's family provides the "nkwa" (local beverage) meant for this meeting. After the formal introduction, the marriage is blessed and prayers are said and the drink is consumed by all present. After some days, the girl is expected to return the containers with which the drink was brought. By this visit, she is introduced to the boy's family. She is at this visit, accompanied by her friends who are expected to leave her there. She spends two or more days doing all the chores girls of her age are expected to do.[63] This gives the boy's family the opportunity to assess her whether she is hardworking, respectful, a good cook, neat and so on.

The final event is the final transfer. A date for this, which is secretly fixed on the day of the formal announcement. On that day as pre-arranged, the girl is sent on an errand, may be the river, farm, market or a ceremony, on a route arranged with the boy's family. There, young men from the boy's family lay ambush and abduct the girl and convey her to the boy's residence. If the ambush fails, the boy's village is subjected to taunts, but if it succeeds, the next day, groundnuts of large quantity is brought out and spread all over for all young men and women to eat while they dance.[64]

Another process by which a wife is acquired is widow-inheritance. When a man dies, and leaves a wife who is of child bearing age and well behaved, arrangements are made for a relation to take over.[65] She now becomes his wife.

Ceremonies/Festival: There are many ceremonies and festivals celebrated in Bajju. Some of them are naming, initiation, pre-harvest festival and mourning ceremonies.

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[62] Ibid.p30

[63]Doma, B.A., The Agwam Bajju palace, Zonkwa: an Exposition of Bajju traditional Architecture. M.Sc Thesis (unpublished) , Department of political science, Faculty of Social Sciences, A.B.U., Zaria, (1997) p22

[64] ibid

[65]Duniya J., a Civil Servant, Interviewed in his Residence at Graceland, Hanwa, Zaria, on the 14th December, 2013

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Naming Ceremony (tunasaa): A newly born baby is named after seven days. For this ceremony, "churong" normally referred to as "beniseed" is fried and pounded into flour, mixed with edible oil into a soft paste. The naming is done in the morning by an elderly woman. She first of all whispers the child's name to its ear before announcing it to those present. She then puts the "benniseed" paste into its mouth and ask the gods and the ancestors to make the child's life taste as nice as the "benniseed" paste.[66] The child is placed on a shield called "ariyet" in a swinging motion. She shows to the four cardinal directions, and shown a spear and shield. The cardinal direction is to indicate the people whom he could wage war.[67] For a baby girl, she is shown a winnowing tray (bibzi) and a head board (abziyai) which indicates her winnowing and carrying firewood.

Initiation Ceremony (NwaAbvoi): The initiation into the "Abvoi" secret cult takes seven days. It takes place in the dry season between the months of March and April. In a community, the whole age group of 15-17years are initiated at the same time. Only male form the membership. At the start of the ceremony, the initiates are gathered in the evening and put into the cult's shrine called "Gria-Abvoi".

The Gria-Abvoi is a room structured with compartments arranged one after the other. It becomes darker as you go deeper into it. As the initiates enter the shrine, they are subjected to severe beating especially initiates who have proved to be badly behaved to the members of the community. Once inside the shrine, they are huddled together and covered with fronds of some trees and are fed. The next morning, they are shaved and taken to the stream to bath, and are returned to the shrine. They could now be served food. Teaching starts after eating. The initiates are now taught how to fight wars, behaviors at hunting expeditions, responsibilities as husbands

[66] McKinney, V.C., The Bajju of Central Nigeria: A Case Study of Religious and Social Change. Ph.D thesis, (unpublished) Michigan, University of Michigan (1985) p160
[67]Doma, B.A op cit p25

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and fathers. They are also taught the history of Bajju, the customs and traditions, the secrets of the cult are revealed to them in the course of the seven-day initiation. No man is expected to reveal these secrets to non-initiates especially women. Any man who is found to have revealed the secrets is killed by the Abvoi divinity itself. Some initiates die as a result of physical punishment especially the badly behaved ones. On the seventh day, they bath and are taken to "Katyekon" (village playground) where the whole people are waiting.[68] Mothers would be searching frantically for their sons. As soon as the mother sees her son, she rushes and rubs oil (bamyi) all over his body, after which food and drinks are served to both the initiates and the people gathered at the "katyekon". After, cultural dances are performed.[69]

Pre-harvest: This ceremony is being observed between the months of June and July. It is a time when some new crops have ripen and harvest starts. These crops are not to be consumed until they are dedicated to the gods and ancestors. These crops are mostly "jok" (beans), "Akam" (cocoyam), "Anhuwan" (yams). The consumption of these crops without dedication could lead to serious ailments such as stomach disorder and even death.[70] The ceremony starts by slaughtering of fowls or goats by households. The alcoholic beverage (nkwa) is prepared by every household and her taken to the village square where blessings and prayers are offered, after which the drinks, food and the meat are taken. Dancing and singing marks the end of the ceremony.

Burial Ceremony: When a man dies, the Bajju considers it a transition. He has to be prepared for a journey to "ababzen" (abode for the dead). His burial is conducted as if he is really undertaking a long journey. The deceased is given a bath and his hair is shaved. The grave is roomy. An individual enters the grave with the deceased to escort him just to reappear after some

[68]Doma, B.A op cit p26
[69]Habu, D.B. op cit p80
[70] Ibid p62

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few hours.[71] After the burial, a mourning period is observed. During this period, women in the village tie strings of certain bark of tree called "huom".[72] The celebration is called "bafo kana" (mourning dance). It is a celebration that is meant for old people. McKinney remarked that the "bafo kana" was a celebration of an elder, mostly great grandparents.[73]

During this ceremony, the community is divided into sections whereby every section would be assigned on which section to provide food and drinks for the whole village, while the singing and dancing commence with the arrival of the masquerade (akursak) who leads, the associates of the "abvoi" emerge right from the stream (nchen) to the "katyekon" where the ceremony takes place.

Religion: there were two major religions found in Bajju but today, there is one dominant religion.

Traditional Religion: In the pre-colonial period, the dominant religion was what can be described as the African Traditional Religion which the Bajju worshipped. According to Duniya, J., the "abvoi" worship was imported from probably among the Kadara people. They believe that god has already established things in the best way they should possibly be. The Bajju treatment of religion focused on man's relationship with god (kazah) as mediated through the ancestors and other spirits. It is on the basis of the Bajju's believe that every child born was initiated. As such, Bajju believed that "Kazah" is the creator of the world and presides over the world, but the Bajju have no indication on the account of the creation of the world traditionally.[74]

[71]Doma B.A. op cit. p29
[72] Ibid.
[73] McKinney, V.C. op cit p170
[74]Duniya J., A Civil Servant, Interviewed in his Residence at Graceland, Hanwa, Zaria, on the 14th December, 2013

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Christianity: According to Yusuf[75], Christianity came into Bajju area in about 1929. The first church that was established was the Sudan Interior Mission now Evangelical Church of West Africa (ECWA), followed by Catholic, Baptist, Africa Assemblies of God, Anglican, Methodist and Cherubim and Seraphim Church movement. The establishment of these churches goes hand in hand with the establishment of schools, which trained the people to become teachers, clerks, priests and bishops. In the protestant churches, there are Bajju reverends, pastors, deacons and deaconesses.[76]The Christian missionaries exploited the opportunity offered by the oppressive native authority rule by quoting biblical passages as thus,

> *"Come to me all you who are weary and burdened, and I will give you rest. Take my yoke upon you and learn from me, for I am gentle and humble of heart and you will find rest for your souls. For my yoke is easy and my burden is light."*[77]

The Bajju who felt certainly burdened by the native authority rule resorted to becoming Christians for burden to be lightened. By 1930, there were churches established all over Bajju land.

The Bajju Legal System: The Bajju traditional society had a well-defined set of legal sanctions to deal with offenders of societal norms. The legal system had a set of fines, penalties and even exiles which punished the offenders, cleansed the community of ritual danger and reincorporate trespassers. The legal system cut across murder, homicide, adultery, incest, theft, to mention but a few. For less serious offences, a fine of a pot of beer and a red or a white cock is imposed.[78]

[75] Yusuf, D. A Farmer, Interviewed at his residence in Zonkwa, Zangon Kataf, Kaduna state, on the 16th November 2013.
[76] Ibid.
[77] Matthew 11:28-30, New International Version Bible.
[78]Doma, B.A., op cit p30

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Murder: if a man deliberately murder another, the "Bagados" also sentenced to death. This judgment is carried out by poisoning the offender.[79] McKinney pointed out that "they carried out this sentence at a location near Sakwak".

Homicide: If an individual committed homicide in Bajju, the "Bagado" imposes exile on him for a period of about one to two years. They tie a small calabash around his neck and sent him on exile to Kagoma leaving his wife or wives (as the case may be) and all his belongings. After the exile, the offender is brought back, shaved and sacrifices are offered before he is reincorporated.[80]

Incest/Adultery: If an individual commits adultery/incest, both the offenders and their spouses are cleansed. The reason for that is, if the two are not ritually cleansed and one of them happens to fall sick and the other goes to greet the sick person; the sick person will die.[81] In order to avert the above, the excrement of a black dog is mixed with water for them to drink. The rationale is that a filthy act could be neutralized by the application of a similar filthy treatment.[82]Such was the socio-cultural structure of the *Bajju* people of southern Kaduna before the colonial era and the introduction of modern socio-cultural structure such as Christianity , education, modern dressing among others.

2.6.3 Atyap

The *Atyap* community on the eve of the colonial period was a traditional community whose activities were guided by their own belief. According to Yahaya, the social structure in the *Atyap* pre-colonial society was based on family or household grouping, clan or lineage grouping, and village or community grouping. But the basic social unit was the lineage. This is

[79] McKinney, V.C., op cit p62
[80] Kato, M.N., A Study of Traditional Social Organization among the Kaje, with Special Reference to Social Change during Recent Past. M.Sc. Thesis (unpublished), Department of History, Faculty of Arts, A.B.U Zaria, (1974) p50.
[81] McKinney, V.C., op cit p64
[82] Ibid.

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because a family or a household is part of a lineage which consists of the parents and their children including other close relatives.[83]

Each of the clan is believed to be exogamous where marriage between members of the same clan is not permitted. The clan members believed themselves to be historically related by descent from a common ancestor. Marriage between *Atyap* children is by special arrangement. In most cases, it is done from their childhood usually at the age of seven when the groom-to-be will render agricultural service for one week to the parents of the girl as part of the bride price. This agricultural service is called *karpniyat* in *tyap.*

In addition to the social activities in *Atyap* community was the *sharo* which was practiced as a recreation during the dry season. It was practiced among the youth from age 16-20years. There was also the *Angani* which was a whipping contest among men from the various clans in form of a feast or festival that usually lasted for a week and it is done usually at the end of the annual harvest. In addition, we can find communal feast and festival hunting expedition and religious rites among the *Atyap* social structure before the arrival of the colonialist.[84]

The *Atyap* had three main classes of music depending on the occasion. They include the *gugwa*, in which animal's horn was used. It was for ceremonial occasion and conveyed sense of dignity to the *Atyap* man. The second class of the *Atyap* music was the *zunzu* which was mainly by young men who used flute for music. It is usually played towards the end October and the beginning of November when farming activities were over. It was to signify end of farm work. The third music was the *kuku* which was a sentimental and solemn song by women. It has no specific season. It is occasioned by any problem befalling the people that the women wish to voice out.

[83]Kantiok K.,A Farmer Interviewed at his Residence at Kafanchan, on the 16th November, 2013.
[84]ibid

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RELIGION

Before the introduction of Islam and Christianity in Northern Nigeria, the *Atyap* community was predominantly traditional worshippers. The people believed strongly in idol worship and observed spiritual rites and made sacrifices to their gods. One of the famous religions of the people was the *Abwoi* cult. Tradition has it that the *Aku* were the custodian of the paraphernalia of the *Abwoi* religion and performed the initiation rites for all the initiates. The *Abwoi* religion included elaborate initiation ceremonies and in the continued presence of deceased ancestors. It was secretive, with incentives for spies who reported saboteurs and death penalties for revelation of secrets.[85] The *Abwoi* had a messenger which usually comes out in form of a masquerade called *Akursak* which symbolizes that the *Abwoi* cult was for the social control of the society. For instance, to control the women the *Abwoi* declared what was called *"stwai-yuan"* (the year of the rope) usually before the farming season. During this period, women for the first six months of the year were restricted in their dress and travelling after which there will be a celebration for the loosening of the restriction. Thus, the people have great confidence in the *Abwoi* religion, they believe that the *Abwoi* possessed mythical powers and when called upon provided the community with protections and immunity against various infections and in terms of evil.[86]

According to oral tradition, the period of the *Abwoi* was associated with another cultural belief that was linked with the *Maliowum* which was a place where all the skull of the games killed during the hunting expedition were kept for spiritual rites especially when an old man in the community die, those items will be hanged round about the house. The *Maliowum* also served as a place for agreement with the gods against any evil that will come into the

[85] http://www.atyap.net/atyap/cultureandreligion.aspx
[86] Kantiok K.,A Farmer Interviewed at his Residence at Kafanchan, on the 16th November, 2013.

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community. There was the *magaji Alanowum* who is in charge of the *Maliowum* and the custodian of these items. He was therefore regarded as the religious and political head.[87]

Each of the kindred that make up the clans or sub-clans has a recognized social and religion chief like the *Magaji Alanowum* though not necessary the oldest in kindred and the possible figure of the hereditary position. The *magaji Alanowom* happen to be the chief priest of the cult whose duty include offering of sacrifice for the kindred and to fix a date for funeral and other cultural feast, he is in charge of all big game killed, entitled to the heads of the horned animals and is also the custodian of the human skull taken during war.[88]

The pre-colonial history of the *Atyap* exemplifies the entire life of the people before colonialism. The pre-colonial period for the *Atyap* community was a period when the people to a larger extent experience freedom to practice their beliefs.

2.6.4 Gbagyi

One observable cultural value of these people is good mind and behavior and predisposition to word as demanded. They value submissive character discipline, predisposition to obey orders and fulfil responsibilities. This is reinforced through organization of age grades, favour for the behaved and punishment for the deviants. They thus love organizing their societies with structures authorities some of which are religious and some administrative. As with all rural settlements in central Nigeria, the unit of authority starts with the household under its house head. The household heads are answerable to the clan head or ward head who are all answerable to the village head. All village heads are answerable to the chief. Everybody had his personal

[87] Samuel. N.Y., Pre-colonial History of Atyap (Kataf), Jos, (2008) p88
[88] Meek, C.K., Kataf and their Neighbors: Tribal Studies in Northern Nigeria, Frank Cass and co ltd, London, (1978) p4-5.

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shrine which was propitiated at individual's schedule. Each house had its ancestor shrines and individual or town cults and sanctuaries that had festivals.[89]

Many pre-colonial polities were purely exercising cultural and religious control of the same settlement. Thus, individuals and families paid more allegiance to their kins and cultural cum religious heads in faraway settlements than to the non-tribe rulers in their settlements. Festivals organized to unite all their kins far and near, and their chief priests regarded as ruler of their tribe only, but without defined territory.

The people value joint or cooperative ventures being a form of labour contract. Such can assist the weak and create avenue for criticism, competition, standardization, excellence, courage and correction. Utilization of natural and human resources is a value. Hence, laziness is condemned, as the immediate natural endowment effectively utilized and transformed into wealth and assets. Every man expected to know some method of crafts and medicines, while women have fuel wood industries, pot bakery, personal farms, knitting, brewing and sylvan produce abilities. They are very hardworking and initiative.[90]

Gbagyi love novelty and designs. Hence, they mark their bodies in peculiar ways. These marks transferred on their manufactures as their trademarks/designs. Sometimes, these marks on the face or body is a show of strength to withstand hardship and pains. Arts and creativity signify beauty among the Gbagyis. It is an attainment of quality and competitiveness.

Festivals and initiations are cherished as avenues of socialization, entertainment, leadership development and demonstration of riches, status symbol and community service. Each family or village is expected to organize a festival of a sort to entertain non-kins and tribes. Most cults have festivals and ceremonies to entertain, initiate and spiritually protect the community by

[89]Yohanna, J., A trader, Interviewed in his residence in Sabon Tasha, Kaduna State, On the 8th of March, 2014
[90]Filaba, M.A and Gojeh, L.A, Koro and Gbagyi Subgroup relations, Gabdel integrated services ltd, (2008) P14

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lavishly throwing a ceremony attended by other tribes. Ceremonies were held in some of the arenas for hosting neighboring groups. Some of these ceremonies were burials, turbaning, marriages, annual festivals and cult festivals.[91]

Adherence to religion is part and parcel of Gbagyi life expressed in their daily verbal communication, sacrifices, enchanting and cults etc. they have psychological, political and social lessons. Religion gives courage by believing that fore-father spirits provide protection, success, etc. and that deviants can attract bad luck and curses from fore-father spirits. Religion is used to control women, make people to fear and conform. Religion is an aspect of social and political power, enfranchisement and right to participate in expropriation of labour and surplus value. Religion is a source of authority, laws and all types of codes of conduct. Now the church join in, but killing their traditional religions. They started becoming converts and preachers among their neighbors since the Sudan Interior Mission (SIM) established itself there in 1902, and setting up bible schools where neighboring tribes were trained. The Gbagyi preachers attempted to get converts among neighbors and that since then, had encouraged tolerance, co-existence, western philosophy manpower development and community development projects. The church today has assumed political, spiritual, enlightenment and inter-tribal regional connections roles. The first three churches that significantly impacted on the people in the region are ECWA, Roman Catholic, and Baptist.[92]

2.7 The Economic Activities of the Communities under Study

2.7.1 Jaba

Farming was the major activity being practiced by the Ham people. It was their major source of livelihood that sustains and brought income for them. They trade with these

[91] Ibid p8
[92] ibid

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agricultural products in the market to get those necessities they did not have. Intercropping was commonly practiced as a system of farming and the distribution of crops depends heavily on the incidence of rainfall. The agricultural products that people get themselves involved in farming are food crops such as cereals, sorghum, millets, ginger, locust beans, hungry rice, soya beans, palm produce, pepper, maize, cassava, potatoes, cocoyam, beniseed and a little quantity of rice was produced. The soil is rich loam and marshy and the people were good agriculturists. Rice and onions was only farmed in small quantity.[93]

The men sometimes go for hunting and fishing and a considerable number of stocks such as goats, birds, pigs, fowls and dogs were kept as domestic animals. Each household has his or her own obligation to do when it comes to agricultural activities. The men weed and make ridges and the women are responsible for planting the seeds in the ridges and preparing food for their husbands and children to eat in the farm. Sometimes, a woman took part in making the ridges where the husband is weak but is sometimes helped by relations.[94]

The surplus agricultural produce are exchanged with another family who farmed a different agricultural produce or exchanged with any industrial products of choice. It is also taken to the market for exchange because trade by barter was the common system of trade. Some surplus agricultural products are kept for the next farming period, and thereby food was available to them at any given time.

The existence of Nok culture and civilization dated back to between 500Bc and 200AD in this area. They had knowledge of iron working and introduced at the same time stone axes, adzes and even what appeared to be hoes are also plentiful that stone have been the normal raw

[93]Shunom, G. op cit

[94] Temple O. Tribes, provinces, Emirates and State of Northern Provinces of Nigeria, Frank Cass Publishers, London (1965) Pp138-140

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material for tools and weapons. Small stone arrow points, barbs, perforated quarts beads, solid quartz, lip-plugs and tin beads were common.[95]

The industrial production artifacts discovered in this area indicates the art of iron smelting, pottery, weaving, ancient wood work and music.

Iron smelting activities was carried out in two types of furnaces, the wall and pit furnace. Evidence of this later can be seen today in places like Kwoi, Nok and Chori.

The Ham people are believed to be excellent pottery makers using clay to construct artistic designs of pots. However, this gradually gave way to western and oriental products. Figurines of people and animals were also common objects made of clay and during the Nok civilization many of these fine monuments have been taken overseas and are still being illegally traded. Weaving was another form of great art been practiced by this people. There still exists the art of weaving products like mats, baskets, door post for personal and commercial purposes. It is still preserved over time.[96]

Ancient wood work, excavation works and people's current arts confirm great dexterity in wood carving of products like smoking pipes, mortars, pestles, spoons, stools, beds, plates etc. people still build houses and thatch them with bamboos and assorted grass.

Music industry and its instruments has also persisted. The African (Blackman) is famous for his expressions of emotions and moods in music. The Ham people also demonstrate a great deal of this gift. Musical instruments like the drums, local guitar (molo), Byan, Tunghem were and are still being produced and used.[97]

The industrial production was full of technology and techniques especially in pottery, ornamental circlets worn around the legs of Ham women (Gbang), the necklaces of beads (jijah),

[95] ibid
[96] ibid
[97] ibid

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the bracelets (Chie), the earlobes (sakyong) and the lip pluts (sanyi). Skills and techniques of the production of knitted woven works, mats, hats, baskets and loin covering (rige) is this area famous techniques.[98] The terracotta head showing checks and some signs of someone blowing a flute, signifies ancestral worship accompanied by ritual ceremonies and dances, local musicians of traditional flute of bamboo (ntere), or horns of animal (mboo) or stalks of grass (Zhieng) displays the art and social functions, which all manifest itself from the industrial production of the Ham people in the area.[99]

2.7.2 Bajju

The entire southern Kaduna came to share almost same economic activities due to the geography and the socio-cultural realities. Notable among the economic activities are farming, rearing of animals, trading, hunting, craft/industry, building and the land tenure system land disputes among nations. Land in Bajju is usually owned on family basis. According to Kato, the ancestors owned the land, the living members hold the land in trust for the ancestors.[100] The right to use a piece of land is based on membership of a given lineage. But the question is, how do the people acquire these lands, seeing that it was before man became into being? In Kajju, the first person to occupy or work a virgin land continues to refer to such land as "my land" (*kabeinnzuk*). The early settlers occupied the land and that marked the beginning of their claim for the ownership of Kajju land. Land therefore, is usually passed on from father to son who then supports the other members of the family. The availability of the land made it possible for the people to embark on agricultural production coupled with the vegetation and sufficient rainfall.

[98]Fagg B.E.B., The Nok Culture in Prehistory, Journal of the Historical Society of Nigeria, Vol.1, No 4, pp.289
[99] ibid
[100] Kato, M.N., A Study of Traditional Social Organization Among the Kaje, with Special Reference to Social Change During the Recent Past, M.Sc. Thesis (unpublished), Department of Sociology, Faculty of Social Sciences, A.B.U Zaria.

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The Bajju are also predominantly subsistence farmers. They grow wide range of food and cash crops which include millet, guinea corn, yam, cocoyam, cassava, potatoes, groundnuts, beans, e.t.c. farming in Bajju land was the traditional method of farming. The farm implements were locally made by the people.[101] There are several types of farming practiced in Kajju land. They include bush fallowing, shifting cultivation, terracing, crop rotation, mixed farming, and continuous farming. Apart from farming of food and cash crops, the Bajju people also engage in rearing of domestic animals. The animals, just as the land, are collectively owned. The leader holds the animals in trust for the entire house or family. Such animals include goats, dogs, chickens, pigs, guinea fowls, and recently cows. For the Bajju, these animals are considered as a medium of exchange as they mostly feature in economic transaction. Individual ownership of economic property is allowed. To acquire an animal, the individual takes custody of such animal at breeding age and takes care of it as if it were his. If the animal litters or hatches, the owner gives the person one or two of the littered animals and takes back his animal. By this contract, a baby could acquire animals as any of its relations could negotiate and enter into the contract on his behalf. Domestic animals are highly valued in Kajju because of their economic value. Apart from being alternative source of income to their owners, they provide that manure that is used for agricultural production.

Trade is another important economic activity practiced by the Bajju people. However, the trading activities will be discussed in two ways: pre-colonial and the colonial trades. The pre-colonial trade in Bajju is also sub-divided into domestic, long distance trading and lending.

Domestic trade is based either within a family, house or village. In this trade, the exchanges were not in absolute standard terms rather, they were relative and determined by some considerations. The first consideration is who approaches the other. The second consideration is

[101] Kato, M.N., ibid P41

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the relationship of the individuals involved. With this type of transaction, market is not required and is mostly done on trust.

Lending is when a person in need of a certain item which he doesn't have at the time it is required could approach another person to lend such item. This happens mostly when one has to hold a feast for which he is not sufficiently prepared and in most cases when one's prestige is at stake. Animals, seeds and other items are acquired on loan. A person who takes an animal on loan repays when such an animal litters. A person who takes seeds on loan repays after harvest. For the lender, it is a kind of investive consumption. For the borrower, he has been able to raise capital payment is without interest.

Long distance trade is the type of trade which involves inter village trade. It is called "*Kamyim*". By this practice, a person who requires certain commodity which is not available in his village could arrange with a relation or a friend in the other village where that commodity is available. A meeting point is arranged and it is usually mid-way between the villages of the trading partners. In other words, you bring what you have in exchange for what you want. It was mostly practiced by women and is mostly among the Bajju villages. Though, it wasn't limited to Bajju inter-villages. It also goes on between Bajju women and other distant ethnic groups.[102]

The colonial era trade on the other hand was mostly money economy trade. It also witnessed the active participation of Bajju men, unlike the pre-colonial period where only few participated, and during this period, the emergence of markets, taxes, white collar jobs took the center stage at the colonial era. Unlike the women, men go for different items. They engage mostly on textiles and livestock and only few dealt on grains. They tend to acquire and run shops rather than hawking from place to place. As for those men who deal on livestock, the buying is done locally. They have to travel to larger towns like Lagos, Port Harcourt, and Enugu where

[102] Ibid Pp45-46

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they sell their livestock. On their way back, they buy cloths, plates, soap and other petty things. The men tend to have more capital than women.

The wider trading activities practiced during the colonial era did not put an end to the local trading. One of which is the brewing of local liquor. This trade was recognized officially by the colonialists and was to obtain a license from the native authority after which a bar could be recognized. Women who could not afford the liquor fee would have to pay a token to the license holder and brew the liquor in her bar.[103]

Another economic activity practiced all over Bajju as noted earlier in this chapter, Baranzan the progenitor of the Bajju was a hunter. It therefore becomes a kind of tradition to the people. They practice basically three types of hunting: communal hunting, individual hunting and overnight hunting.

Fishing is another economic activity carried out. It is usually carried out by the youths in the dry season. Hooks are commonly used as the cheapest means of fishing. With the development of time, people began to use chemicals like gamalin instead of hooks. But the method tends to pollute the water.

Other economic activities include; pottery, building, braiding of grasses, building of granaries, mat-making, dyeing, carving, bee-hiving and oil making.

Consequently, the colonial conquest of the area and the consequent establishment of Native Authority with humiliating taxes and forced labour dealt a series blow on the economic activities that were rising. Similarly, the establishment of missionary churches and schools has a multi-faceted impact on the economic and the socio-cultural life of the people. On the one hand, it led to the creation of an elite class that has risen to become pastors, teachers, bishops and men

[103] Kato, M.N op cit P50

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of the police force, army and other civil servants. It has on the other hand, undermined promising economic activities that existed in Kajju.

In a nutshell, most of the economic activities done in Kajju in the past only exist in the memory of few old men.

2.7.3 Atyap

The Atyap economy was predominantly an agrarian society. The concept of land in Atyap was communal and seen as one of the major means of production. However, there were non-agricultural economic activities such as hunting, fishing and the manufacture of different kinds of handicrafts which resulted in the availability of specialists in such activities and also domestication of animals like goats, pigs and chickens. One of the factors that necessitated for a selection of a settlement in Atyap land was the availability of rainfall and fertility of which was suitable for agriculture and animal husbandry. Thus, it was this factor that governed the Atyap settlement pattern.

In the pre-colonial Atyap economy, the basic unit of production both for agriculture and craft (cottage industries) was the household with every one, male and female, young and old, living in the same compound and contributing their labour for producing foodstuff. The household is usually large, sometimes containing over 20 adults and their families. In this case, the more labour available to the household, the more land it cleared, held and cultivated. This labour unit enables the members of the household to engage in extensive mode of cultivation. In addition, there were such cooperative forms of labour known as "*gaya*" "*Adashe*" and peer group farming teams to facilitate cultivation of large farms.[104]

[104]Zuwaqhu, B.A, Aspect of the Economy and Social History of the Atyap 1800-1960 AD. Journal of the Savannah, vol. 1, No 10, A.B.U press, Zaria, (2001) P28

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The Atyap just like other communities in northern Nigeria before the colonial period was a predominantly agricultural based economic community. Farming is known among Atyap community in pre-colonial period up to 1902 at the time when the colonialists came to Northern Nigeria. Tradition has it that the major food crops grown in the Atyap were acca, millet, guinea corn, maize, etc. most of these crops were mainly for domestic consumption. Only few were taken to nearby market.[105]

Oral tradition states that any member of the community found not practicing farming is suspected to probably involve in an illegal activity. This is because tradition has it that a grown up son leaves his father's compound, builds house and farms his own account. It is called in tyap "*gang karp*".[106]

The Atyap people were also known to be hunters. They hunted both wild and small animals. There used to be a hunting expedition where the village heads and elders will invite all the hunters from all the villages to embark on a hunting expedition usually on the eve of coronation of a leader because the traditional belief that the success of the expedition will determine the success of the leadership.

Other pre-colonial economic activities of the people included their local industry such as the handcrafts industries. Although majority of the people were farmers, so it is obvious that they did not consider any other occupation to be of equal importance. Handcrafts such as weaving and dyeing of clothes, baskets, mats, hats and pottery are produced in small quantity in the cottage industries. There were also blacksmiths. Whatever they couldn't produce but desire it, they produced them from inter-household barter among the Atyap community.

[105] Ibid

[106]Bakut Joseph, traditional council, Interviewed in his residence on at Mabushi, Kataf Kaduna State 20th December, 2013

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Technology of the Atyap people before the colonial period was simple and non-power driven and even agriculture was not based on animal drown plough. Therefore, to this extent, the technology was primitive.

There is a certain amount of petty trade carried among the people especially the women, who on behalf of their husbands, sell their excess supplies of their agricultural produce and firewood. There was exchange in different levels among households, members of family, and members of village.

2.7.4 Gbagyi

Scenery of the relief is characterized by dotted hills, gorges, patches of forests, streams, paddy lanes and farms which over centuries greatly influenced the development of the people. The hills attracted human settlements due to the opportunities that they offered. When the Jihadists intensified raiding the central Nigeria area, almost all the vulnerable inhabitants ran into forests and hills as natural fortification against enemies. The mountains were also vantage points for locating enemies like the slave raiders from other communities. Hilltops provided secret training grounds. In fact, hill settlements were the last strongholds of communities practicing traditional religion against Islam. One of the major factors that enabled the Gbagyi to withstand the Jihadists incursions was the hills that were inaccessible to the Jihadists' cavalry.[107]

Other opportunities offered by the hills are perennial springs that enable the people to withstand draughts, available fertile paddy-lands for farming. The hills were areas for manufacture of stone tools as weapons and utensils. Most importantly, some of the hills and inselbergs contain iron ore and cheaply collected on the surface. This influenced the manufacture of implements and the subsequent boost in agriculture, marketing and war techniques. The factor of iron enabled the people to have a tremendous impact on the environment. Also, the use of iron

[107]Gunn, H. and Connant, F.P, Peoples of the Middle Niger Region. AFRICA Vol.10 (1960) p89

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enabled them to become military formidable, which had direct impact on the emergence of kingship institutions and intergroup relations in the area. Furthermore, the hills and forests in this region were natural reserves of games. They hunted for food and for exchange, while the foothills and gorges are very fertile and have been cultivated for many centuries without much decline. Hence, the hills and forests naturally attracted settlements.[108]

Like the hills and forests, the streams also influenced the pattern of settlements in the region. Many of the villages lived by the banks of the rivers and streams, as there were no wells in those days and to also practice fishing. Hausa fishermen and hunters seasonally go there to fish or hunt. This also encouraged trading and communal fishing, hunting and festivals. Fishing and hunting also encouraged crafts, as there was need for various instruments and tools for trapping fish and animals. This in turn encouraged trade and intergroup relations. This in turn encouraged trade and intergroup relations. Whenever farms around settlements became exhausted and characterized by quick growth of weeds and stringers and subsequent poor yields, they abandoned such settlements for nearby virgin lands where they eventually built hamlets. This informed the dispersed settlement patterns of the Gbagyi.

The Gbagyis are fond of searching for new virgin lands, which may not have much weeds and occasion higher yields. One of the most important issues is the land tenure system. Since agriculture remains the major activity of the Gbagyis. The Gbagyis used to give out farmlands to persons or group that indicated interest. Once the new comers settle permanently, or agrees to be attending and paying homage to certain cultural practices, they inherit the land given to them, but the original owners of the land harvests the economic trees.

[108]Filaba, M.A and Gojeh, L.A, Koro and Gbagyi Subgroup relations, (2008) Gabdel integrated services ltd, P28

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With the coming of new groups, while land is fixed, quarrel over land is now frequent since agricultural produce are becoming more valuable, the Fulani who are always migrating pastoralists are settling down to farm where their cattle have manure.

Labour relations are some of the most and basic binding forces. Blood relation stressed in order to have access to the labour and support of members. The household is the basic unit of production. Members labour and sharing of the house produce is determined by the household head, normally the eldest. Members organized works on the general farm or personal farm labour contracted or exchanged from another house or village. Hence, various forms of labour contracts exist whereby each member of the community or the whole village and group of villages arrange labour contract.[109]

2.8 The Political Settings of the Communities under Study

From time immemorial, traditional rulership has been the oldest system of political administration all over the world. The traditional rulers were given different names depending on the societies they found themselves. Others had both political and religious responsibilities. They include Caliphs, Sultans, Chiefs, Emirs, Kabakas, Etsus, Dukes, etc. Historians, anthropologists and sociologists have divided African political system into two groups: the centralized and the non-centralized systems of administration.

2.8.1 Jaba

Political authority at the local level was vested in the hereditary headman (kpopku), assisted by a council of elders comprising of the Ham clan heads: Ngang, Dung, Kpat, Chorh, Wenyem, Kudack, Daduu, Shambang, Duhyah and Fillow. The Kpopku and the council of elders comprising of representative heads from all clans made up of what came to be known as the "Yer Dam Assembly".

[109] Ibid P29

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The political organization within the Ham community is made of what is called the village or direct democracy amongst the Ham people. The direct democracy system of political and social relationship characterized by the Ham political system up till the 19th century when it was replaced by the imposition of an alien (Emirate system) to the Ham of a monarchical hierarchical system. However, as a system, village republicanism did not completely disappear. It only lost its terrestrial significance and became conterminous with the clan or the sub-lineage[110].

This direct democracy or republicanism system was characterized by frequent general assemblies at the traditional village square (yer). These assemblies were referred to (kyong) or (Hess-Hess). The assemblies were preceded by public announcement known as (Gyoing) conducted by the village crier (Nagyoing).[111]

Another organ of government was the council of elders (Moshakpoo) who were fathers of component family segments. The hereditary headmen who was known as the "Kpopku" in every Ham village covered and presided over all the informal meetings that took place usually at the traditional village square the (Yer). The chief priest and his council of elders (moshakpoo) holders of ritual offices in the communal government (motyunkpokku) and semi specialized functionaries like the controller of army (kpop cap), chief farmer (kpopryem), head of blacksmith Guilds (kpop Nnah) and the town crier (Nagyeing) and all adult male members that undergone the initiation rites.[112]

In this assembly, members, young and old alike, exercised equal rights. They have the freedom to express satisfaction or dissatisfaction about the state of village affairs. They were free to give suggestions, for the solution of village problems or listened to advice on the conduct of

[110]James I. The Ham, their Political and Cultural History. Jos University Press limited, Jos (1997) p59
[111] Ibid, P60
[112] Ibid

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village affairs. The assembly settled marriage problems, disputes between rival clans, sub-clans and lineage. The assembly received reports presented by specialized service chiefs and deliberated on them.

These reports took the form of short and concise accounts of the state of affairs in their respective areas of expertise. Usually, such reports culminated in the declaration of the hunting, fishing and the gathering season opened or closed, depending on the conditions prevailing at that particular time. During seasons of heavy torrential rainfall, the chief of the river (kpop cap) might require the mobilization of labour to build a bridge across the river or to repair the old bridge.

The village democracy as practiced by the Ham people was genuinely participatory democracy in the sense that it involved all members of the Ham community in both the policy making and in the execution of women's participation regardless of their contribution of the overall welfare of the Ham community. The second major limitation of the system, was its denial of civil liberties and equal rights to immigrants or non-Ham member of that particular clan or sub-lineage irrespective of their individual or collective allegiance to the village assembly and to the Ham community in general. There was always some elements of entrenched xenophobia from elders, head of clans, sub-clans, lineages and from heads of semi-specialized services.[113]

2.8.2 Bajju

The pre-colonial socio-political structure of Kajju is best considered in modern concept as confederacy. The leadership was centered on the "*Gado*" system. The *Gado* is a ruling elder with paternal attributes, a man that must not be found with any questionable behavior. The "Gado" was both the political, religious and rural leader of each *kwai* as noted earlier.

[113] Ibid P61

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The "*Gados*" from these *kwa*i have a meeting called "*Katung Bagado*" (the traditional council meeting) under the leadership of the supreme *Gado* resident at "*Dibzi*" (Kurmin Bi). They meet twice a year. At the meeting, all problems affecting the land are discussed and the land is blessed.[114] Besides the two meetings, the supreme *Gado* could call another meeting if the need arises, this is usually to address issues that have not been properly handled at the lower level. In the latter case, such a meeting served as a court of appeal. The *Bagado* arbitrated between clans and villages.[115]

The Bajju area had no history of Hausa settlement in the area. However, there has been a long history of pastoral Fulani, and the relationship that Fulani influenced in southern Zaria consisted of a mutually beneficial relationship between Fulani cattle herders and Bajju. Fulani paid an annual tribute to Bajju for use of their land for grazing.[116]On the other hand, pastoral Fulani helps in improving the fertility of the soil with their cattle dung. When the Hausas from the emirates penetrated the southern Zaria and sought to capture slaves in some instances, the cattle Fulani joined with the indigenes population in opposing the emirates. In 1897, when Sarkin Delle was executed by the Emir of Zaria Abdullahi, the Jagindi Fulani rose against Abdullahi and was supported by the Kagoma and the Kaje (Bajju).[117]

However, the relationship between the Bajju and the emirate was that of slave raiding. The Bajju first came in collision with Hausa during the reign of Abdul Karimi, Emir of Zaria. On hearing that the Kajes had refused to pay tribute, Abdul Karimi sent a force against them and Abaranza the Magajin Kurmin Bi and a truce was reached. The position of Magaji was

[114]Duniya J, op cit
[115] McKinney V.C., The Bajju of Central Nigeria: A Case Study of Religious and Social Change, Ph.D Thesis (unpublished) University of Michigan, Michigan (1985) p56
[116] Kato, M.N., A Study of Traditional Social Organization Among the Kaje, with Special Reference to Social Change During Recent Past, M.Sc. Thesis, (unpublished) Department of Sociology, Faculty of Social Sciences, A.B.U Zaria (1994) p42
[117]Hogben, S.J and Kirk-Green, A.H, The Emirates of Northern Nigeria: A Preliminary Survey of their Historical Traditions, Oxford University Press, London (1966) p554

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subordinate to that of "*gado*" the ruling elder of Kurmin Bi. Secondly, the name Abaranzasounds or suggests that of the progenitor of the Bajju.[118] It is confirmed that the Bajju area was split into two among the Zazzau and the Jema'a emirates. But what remained in contention is whether the Bajju were subdued by the Hausas. The Kaje (Bajju) and other ethnic groups of southern Zaria refused to recognize the over lordship of the emirates. As such, by 1857, Abdullahi moved into the area again. It is noted that to restore order among the Gwari, Kaje and Kataf of the south, Abdullahi appointed one Tutumare an Ikulu convert to Islam who knew the district intimately to the military office of Kuyambana, with command the "lafidi" or heavy Calvary.[119] The appointment of Tutumare by the Emir could be due to the difficulty he found in knowing the area. The slave general station at Kachia was charge with collection of annual tribute from the Kaje, Kamantan, Ikulu and neighboring tribes if necessary by force.[120] This was the situation before the arrival of the colonial occupiers who began operation in the Bajju area.

When the British occupiers set their feet in 1900, most areas in northern Nigeria witnessed the fiercest blood bath. The British control over Bula and Ilorin which were conquered in 1897 was restored. While other places were forcefully conquered, other emirates like Katsina and Zaria submitted without resistance. The Bajju was not spared among the areas the British exhausted their arms. The conquering team went further with the conquest of Kankada. From there, they moved forward and continued to Madakiya where the Bajju shot arrows at the British scouts. By the time the main force arrived, the people had fled. From there, they continued to Katsiik where the people had fled to. The force conquered them there and they moved to Zonkwa. After then, they proceeded to Fadiya. The defeat of Fadiya completed the conquest of the Bajju area. The peaceful acceptance of the colonialists by the Zazzau emirate and Jema'a

[119]Smith, M.G, Government in Zazzau 1800-1960, Oxford University Press, London, (1960) p170.
[120] Ibid

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might have pleased the colonial agents. As such, the colonial agents accepted the emirates claim of political control of the area. For that reason, the southern part of Bajju was placed under Jema'a and the rest of the area under Zaria.[121] In 1915, Kaje and Kaninkon rose up against the rule of the Emir of Jema'a but were subdued by British forces.[122] The Bajju described the colonial era as a period of double colonization. By this, the British conquered them and forced them into the emirate box to be administered by the Emirs.

The British after the conquest of the Nigeria area established the indirect rule system under the guise of Native Authority system headed by the colonial "Emirs" and "Chiefs". In order to enforce this colonial order, the Emirs appointed district heads of Hausa origin to man the non-Hausa ethnic groups administratively. This act created tension, sometimes crisis.[123] Also, the appointment of Chiefs led to the weakening if not the destruction of the Gado system that has been in existence. This therefore consolidated the Hausa rule over the non-Muslim groups of Southern Zaria.

The struggle for the independent chiefdom of Bajju started immediately after the colonial conquest of their area. As soon as the Bajju realized that their traditional leadership institution which bounded them together had been destroyed, they quickly started the request for a modern equivalent to enable them avert disintegration of their society as well as restore their independence.[124] Because the Bajju society were virtually non-literate at that time, the mode of request for the restoration of their independence was for quite some time verbal in nature or sometimes resorted to violence. After much petitions and cries, the prayers of the Bajju people were answered when Col. Lawal Ja'afaru Isa, the then Military Administrator of Kaduna State

[121] McKinney, V.C op cit p208
[122]Turaki, Y. Social-Political Role and Status of Non-Muslim Group of Northern Nigeria: Analysis of a Colonial Legacy, PhD Thesis,(Unpublished) Boston University (1982) p185
[123]Hyuwa, D.D., "BvungAnzwrang : A Brief Historical information on Bajju Chiefdom (1996) document p5
[124]Ibid p6

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announced on the 24th October, 1995, the creation of four new chiefdoms in Kaduna state with Bajju Chiefdom inclusive.[125]

2.8.3 Atyap

The pre-colonial Atyap polity was organized in localized lineages, which made up of the four clans of the ethnic group. There existed a centralized authority structure but without concentrating power around one central figure at the helm of affairs to act as a leader of the whole ethnic group, the office of kings and chiefs of Atyap in general did not exist. Among 1the villages horizontal authority structure cutting across already existed, each of them relating to the rest on the basis of ethnic affinity, kinship, reciprocity and alliance.

The formation of an administrative system and institutionalization of Atyap society was a transmission of political administration which transformed Atyap land from pre-colonial Atyap social organization, the evolution of a centralized political system of polity. The description analysis of the pre-colonial Atyap-Zazzau intergroup relations and subordination of Atyap to Zazzau emirate rule. The political and administrative changes this colonial rule used by the emirate brought in Atyap land has been the area of focus. Finally, the factors that triggered Atyap political awareness.[126]

The political groupings of Atyap land corresponded with ethical and the unifying influence which the kingship of a common religious cult (Abwoi) among the Atyap tradition. Authority was a consolidated group type. It however remained essentially the decentralized stateless type in which the socio-political organization was arranged along horizontal lines based on the clan.

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[125] ibid

[126]Meek, C.K., Kataf and their Neighbors: Tribal Studies in Northern Nigeria, Frank Cass and co ltd, London, (1978) p41

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Chieftaincy process in Atyap land started from the ward level on *angwa elders.* The clan and the segmentary lineage system of leadership embodied in the chief priest who was not wielded as a specialized full-time function. Therefore, real power rested with the council of elders, clans and lineage heads and holders of ritual offices. These elders usually came together to select a *madaki* from the level of the madaki (plural) of the sub-clan took over the process of leadership for the *Agwam* (Chief) of that sub-clan. It is however important to note that during the colonial administration, certain changes occurred in the council of elders bringing the membership to nine each with the units under it as shown below.

- Jei (Angwam Gaya): Makwakwu (Kurmin Dawaki), Magata (Fadan Tsohon), Makarau (Gidan Karo), Sob Aku'oi (Mabushi1) Sob Abo'o (Mabushi2).
- Kanai (Gora): Kakwa (Kurmin Gandu).
- Akpaisa (Jankasa): Manchango (Magada Kura), Afokan (Zonzon).
- Sako (Zurkwai):Magwa, Makamurun (Kibori), Chen-Aku'o (Zam Agwang).
- Aku (GidanZaki): Kwaku, Manyi
- Ghui (Kigudu): Atar-gui (BakinKogo)
- Ashokwa (Galadimawa): Sukwai.
- Achichat: Kachechere
- Talligan (Magamiya): Magamiya 1, Magamiya 2 and Mawuka (Gidan Wuka).[127]

2.8.4 Gbagyi

Traditions have been politicized as government policies since colonial time influence people to change their traditions in order to outwit others. The emirs were the informants to the

[127]Bakut Joseph, traditional council, Interviewed in his residence on at Mabushi, Kataf Kaduna State 20th December, 2013

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anthropologists and they purposely misinformed them.[128] Temple made this clear when he requested the administrators to document their legends to save them from being endangered, and to inform the administration on how to cheaply administer the vast country. That the sources of information of the ethnographers were 'sketchy', without information from the natives about whom they wrote, as the resisting natives were unwilling to impart information. He made it clear that their collections were incorrect with many omissions of important facts.[129]

Filaba further noted how the colonial government created imagined glorious past for the cooperating chiefs that super-imposed the colonial repression on the subjects in order to boost their ego, vis-à-vis the resisting groups that were marginalized and had a gloomy history written for them. Since then, lies became political ingredient for preferring some groups. The misrepresentations further informed the tribal cum religious apprehensions and ethnic politics and voting behavior.[130]

During any democratic dispensation, the politicians portrayed appointments to lucrative posts and the creation of states, local government areas and upgrading of chiefdoms as some of their scarce dividends. Thus, government functionaries invite memoranda from the groups and communities that demand for such. As pre-requisite, the requesting group for upgrading showed that it was super-ordinate in the past intergroup relations with its neighbours. Those groups who wished to maintain the status quo or to outwit others, had to forge glorious past for themselves vis-à-vis others they attempt to sideline.[131]

[128]Filaba, M.A., Literal and Historical Inferences from Gwari Legends of Queen Amina of Zaria, in: Jakadiya Journal of the Nigerian and African Languages, University of Ethiopia, (2005) p23.
[129] Temple, C.L and Temple, O., Notes on the Tribes, Provinces, Emirates and States of the Northern Provinces of Nigeria, Second Edition, Frankcass Publishers, London (1965) p14
[130]Filaba, M.A., Literal and Historical Inferences from Gwari Legends of Queen Amina of Zaria, in: Jakadiya Journal of the Nigerian and African Languages, University of Ethiopia, (2005) p24
[131] ibid

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2.9 Nature and Scope of Women's Right to Property in Nigeria

The Right to Property of women in Nigeria is recognized statutorily and under Customary Laws. This is because the Nigerian Constitution, as well as other statutory enactments recognizes a woman as equal to a man in all aspects and preserves by law, the fundamental rights of women in the country. Women, just as men are, among other rights, entitled to own immovable property, same having been guaranteed under the Constitution.[132] The Constitution equally preserves the native law and customs of Nigerians, including women, in so far as such native law and custom is not repugnant to Natural justice, Equity and Good Conscience, hence it becomes incompatible with the extant provisions of the Constitution and as such, such laws are declared null and void to the extent of such inconsistency.[133]

The Scope of women's Right to property goes far beyond statutory enactment to other legal sources as customary laws. That is to say that, women also have right to own property under certain customary laws. It is worthy of note however that most customs in Nigeria do not recognize women's right to own land by virtue of their being women and nothing more. Nigerian courts have non-hesitantly declared such customs as null and void; and accordingly enforced the property rights of women in these areas.[134]This therefore means that property rights of women seems secure, regard being had to the statutory laws in Nigeria and other customs that have been judicially Noticed by the courts. There are however other Communities in Nigeria which practice their repugnant customs which limits property rights of women because no one has bothered to test the customs in a court of law. In some other cases, it may be because the members of that community are satisfied with the customs of the community and have resigned to fate on the note

[132] Section 43 of the Constitution of Federal republic of Nigeria, 1999 (as amended)
[133] Section 1 (1) of the CFRN, 1999 (as amended) provides that the Constitution is Supreme and Section 1 (3) provides that if any other law is inconsistent with the provisions of the Constitution, such other law shall be null and void to the extent of such inconsistency.
[134]*Timothy v. Oforka* (SUPRA), *Asika v Atuanya* (supra)

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that it is not the fate of women to own land and landed property. Women's right to property is not limited only to the Constitution and other statutes, but also to other International Laws and Customary Law.

2.10 Interface between the Women's Right to Property under Customary Law and Common Law

Generally speaking, one will be tempted to conclude that there is no relationship between the Right to property under common law and the right to property under customary law, in that the former is backed by statutes and other instruments and the latter is backed by native law and customs. From the inception of the Nigerian Constitution after the colonial era,[135]Nigerian law customary laws were tested with the subsisting statutory laws in the land at that period with a view to ascertain the effect of these customs on the life of the citizens. This was done through the statutory influence of the constitution vis-à-vis the pronouncement of courts with a view to declare null and void any custom that is barbaric or repugnant to natural justice, equity and good conscience.[136]

Before the coming of the Constitution, Customary law recognizes the Right to Property, which encompasses the acquisition of properties under the modes discussed earlier in this work, particularly by inheritance. However, customary property rights are characterized, in most cases, with discriminatory contents which in most cases affect other rights of a class of people, particularly women. This then called for the protection of the people bound by these customs by way of statutory enactments, while preserving the customs on the other hand.

The crux of the interface between Customary right to property and the right to property under common law is on statutory protection and enforceability. Section 315 of the CFRN, 1999

[135]That is, from 1900 to 1960. See *Colonialism in N igeria*,http://www.howtonigeria.com/1586/how-nigeria-fared-during-colonial-era/, Accessed on the 14th June, 2014
[136]*Lewis v. Bankole (SUPRA)*

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(as amended) protects existing customary laws before the advent of the constitution and Section 43 of the Constitution statutorily guarantees Property rights for Nigerians. This is the bedrock of enforceability and therefore so long as a custom is not null and void for inconsistency with any provision of the CFRN, 1999 (as amended) or for repugnancy to Natural justice, Equity and good conscience, then such law shall be enforceable under the Nigerian law, using the Evidence act earlier discussed in this work as a conduit pipe to prove same.

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CHAPTER THREE:

RIGHT OF WOMEN TO ACQUIRE PROPERTY UNDER CUSTOMARY LAW

3.1 Introduction

One of the easily recognised and accepted basic human rights is the right to acquire property, albeit some climes tend to view this right to acquire property with some kind of prejudice, particularly against the women-folk. In the traditional customary society, Right of women to acquire property, more especially chattels and other personal items, is significantly different and less regimented. Different to the extent that focus are more on the acquisition of immovable property and freehold/leasehold interest in land and real estate. The reason for this preference in not far-fetched. Customarily, land ownership is perceived as the exclusive proclivity of the men-folk; and the wider traditional society conventionally ascribed that ownership as evidence of affluence/wealth. Incidentally, most native practices do not consider women on the 'list' of affluent members of that society; as even the women folks are still perceived as some kind of 'property' themselves.

3.2 Nature of Women's Right to Property

3.2.1. Right to Property

This implies the right of every person to own movable or immovable property guaranteed under a local or International legislation. The Common law jurisdictions do not appear to have a generally accepted body of law for ascertaining whether the attributes of property ownership attach to permit granted under statutes.[1]This is because of the diversity in legislations and treaties that govern property rights in the world.

[1] Barton B. Property Rights Created under Statute in Common Law Legal Systems, http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199579853.001.0001/acprof-9780199579853-chapter-4 Accessed on the 14th June, 2014

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Property rights of women have been described as the right to own, acquire (through purchase, gift or inheritance), manage, administer, enjoy and dispose of tangible and intangible property particularly land, housing, money, bank accounts, livestock, crop and pension.[2]Customs as it were, have great impact in the area of personal law in regard to matters such as marriage, inheritance, ownership of land and traditional authority, and because it developed in an era dominated by patriarchy, some of its norms conflict with human rights norms guaranteeing equality between men and women.[3]

Having established that statutory property rights are offshoot of the Common Law, we will go further to state the relevant laws governing property rights under common law, adopted by the Federal government of Nigeria in various statutes and legislations, with little or no modifications.

The primary law worthy of consideration is the Nigerian Constitution of the Federal Republic of Nigeria, 1999 (as amended) which guarantees the individual rights of Nigerian citizens to own immovable property all over the country. Also, there is the Land Use Act, which though vests all lands in the Governor of a state or a Local government Chairman on trust for the state, but still recognizes the right of individuals to own same, subject to the overriding public purpose for which the government may need the property. The Land Use Act also safeguards against discrimination against any person's right to own property in Nigeria.[4]

The Evidence Act empowers courts to judicially notice certain customs that have not only been proved, but pass the repugnancy test stipulated in *Lewis v Bankole.*[5]

[2] Ibid at Pp.
[3]Ndulo M., *African Customary Law, Customs, and Women's Rights*, Cornell Law Library Scholarship @ Cornell Law: A Digital Repository, Cornell Law Faculty Publications, 2011, p.87
[4] Section 24 of the Land Use Act, CAP L5, Laws of the Federation of Nigeria, 2004
[5] supra

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3.2.2 Right to Property under Customary Law

There are too many literature that have taken the pain to explicitly discuss the right to property under Customary law, in that the right to property, from the inception of the Nigerian Constitution, has been secured and guaranteed. The Right to own property under Customary Law is hinged on the fact that, Customary law or customs constitutes mirror of accepted usages and therefore where a custom recognizes this right of its people to own property, such right becomes the law of the land and such custom accepted by the people, operates as a grund norm in that community. Customary law is largely unwritten and therefore the right to property is assumed and has gained popularity over a long period of time. With the advent of the Constitution of Nigeria, the Right to property under Customary law has now become a subject of statutory protection. Right to own property of the natives of this community was more of a double-edged sword, in the sense that they enjoyed statutory protection both from the point of view of a customary law that is not repugnant to natural justice, equity and good conscience, protected by Section 315[6] of the Constitution and from the point of view of the basic Constitutional right to property under Section 43[7] of the CFRN, 1999 (as amended).

3.2.3 General Consideration of land Ownership by Women in Southern Kaduna

Under the Bajju customs, when a female child is born, she is shown a winnowing tray (bibzi) and a head board (abziyai) which indicates her winnowing and carrying firewood.[8] This

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[6] Section 315 (1) "*Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be -*
(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and
(b) a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws."

[7]"*Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria*"

[8]Doma. B.A., The Agwam Bajju Palace, Zonkwa: An Exposition of Bajju Traditional Architecture. M.sc Thesis (unpublished), Department of Political Science, Faculty of Social Sciences, A.B.U., Zaria, (1997) p22

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generally shows the place of a woman under the strict Bajju customs, in that, they are basically seen as housewives and have no land ownership rights. The Bajjus have already imported the "abvoi" worship from probably among the Kadara[9] people and believe that God has already established things in the best way they should possibly be.[10]They usually don't associate women with ownership of land, but rather see them as housewives or as chattels that could be possessed.[11]

According to both tribes, a girl child is usually betrothed at a very tender age, and as such not qualified for owning or inheriting any property in her father's house.[12]This has been the practice to the core Southern Kaduna Tribes, particularly the Bajju and Atyaps before the coming into force of the Nigerian Constitution. In fact, the practice is in force till date in areas where the girls are totally submissive to customs and see no reason to challenge same, either out of ignorance of the extant statutory regulations that guarantee her right to own immovable properties in Nigeria or out of the fear of the orchestrated repercussions for challenging these beliefs[13].

This Southern Kaduna custom which generally does not recognise the right of women to own land is predicated upon the fact that landed properties given to a woman are not transferrable to her husband's house.[14] The reason for this is that the people of Southern Kaduna have a competitive custom and as such, where a woman is allowed to transfer landed properties to her husband's house, the properties will be used to make the husband and his people grow,

[9] The Kadara (also Azuwa, Ada, Adara, Ajuwa, Azuah, Ajuah) people make up one of the largest ethnic group in Southern Kaduna, and area South of the present state of Kaduna in Nigeria. Available athttp://www.nairaland.com/1520268/life-ethnic-minority-peep-into, accessed on the 13th August, 2014
[10]Duniya Joseph., A Civil Servant, Interviewed in his Residence at Graceland, Hanwa, Zaria, on the 14th December, 2013
[11]ibid
[12] Ibid
[13] Under the Bajju and Atyap Customs, it is believed that when a woman challenges the dictates of their customs, she is bound to suffer some consequences and repercussions for so doing.
[14]Kantiok Amos. Opcit.

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instead of her own immediate family before marriage.[15]The case is usually the same even where the husband is deceased, the widow would not inherit him. However, a woman is allowed to own or inherit land in certain extremely exceptional situations.

Traditionally, women and indeed widows are not entitled to right of inheritance of land or landed properties, particularly property of their male parents or husbands. In fact, a married woman was herself considered as her husband's property and can be inherited by any of his siblings or close relations as the case may be after the death of her husband. In *Onwuchekwa v. Onwuchekwa,* the Court of Appeal refused to reject as repugnant, a custom in which a husband is said to own the wife along with her properties.[16]

Under the customs under study, particularly in the case of the Bajju, Atyap and Gbagyis, a widow may only, and in very rare cases, enjoy such rights to land of her husband only where, she has a male child for the deceased husband. The said land is usually given in the name of the son she bore for the deceased and not categorically given to her as the wife of the deceased husband. Where the son dies without having any male child or children, the land is seized from her. But there are also exceptions to this position. If a widow has male children, it does not in any way upgrade the quantum of her right in her husband's landed property as she has no interest in her husband's landed property by way of inheritance. The best she can get in accordance with these customs is possession of the land for her lifetime, which land could be taken from her at any time to give a more deserving male member of the husband's family.

Where a woman has lived for a very long time with her husband without bearing a child or having only female children, and or is beyond child bearing age, coupled with a very positive attitude that endears her to the community, the husbands family may reciprocate such gesture by

[15] Ibid
[16] *(1991)5NWLR (pt. 194) at 739*.

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allowing her to live on the part of her husband's property such as a house, and some of his farm lands as a condition to tie her down in the community.[17]

Such a condition exists where there is nobody suitable to inherit her or where she rejects being inherited, but the late husband's family insists on keeping her as part of them. Under this circumstance, she continues to enjoy such rights to property, for as long as she remains a member of that family, otherwise, the property will be seized. This accounts for the reason why these customs frown at women having real property rights under their native laws and customs. However, any woman whose right is violated by the compliance with this custom cannot benefit from the protection of the law except she seeks for the enforcement of her right to property before a court of competent jurisdiction.

3.3 Right of Women to Acquire Movable Property

Right of women to acquire movable property under custom is very lax and noticeable too. Although predominantly, husbands provide their wives with such necessary chattels, both out of necessity and as of choice; female folks do acquire such property if they so desire without reproach from the native customs.

There is the general notion that women in African continent are not allowed to own landed property. This assertion is unfounded because people who make this assertion are confusing two terminologies i.e. *ownership* and *inheritance.* While ownership legally means the totality of rights or interest in a thing and these include the right to use, the right to enjoy, the right to alienate, the right to possession, the right to reversion and if possible the right to destroy. Even in the olden days, a woman had the right to acquire a piece of land from her traditional ruler or chief of her community, just like her male counterpart would do. In modern times, women own land by purchase, wills, gifts, etc. It is only when it comes to inheritance that they

[17] Interview with Tambiyi Francis, Opcit

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are not allowed to inherit land or to enjoy absolute or radical interest. Therefore, women under customary laws of many communities in Nigeria do not inherit land as their male counterparts do. They may own land but they cannot inherit land from their parents and husbands.

Women acquire movable property can be through one of the following:

3.3.1 Ways Women Acquire Personal Property

a) **Direct Sale/Purchase**: Just as the name implies, women are unfettered in their Rights to acquire personal property, in their names and on their behalf. Such method of acquisition is not strange to customary practices. Although the source and scheme of payment might differ, women can make direct market purchase of any necessary chattel, either for personal, domestic or community usage. This is the most common method of acquisition of property by women folks.

b) **Bequeathal**: It is not strange to for an older woman to bequeath to the younger females in the family, such personal items as clothing, weaving threads, cotton gins and various other household utensils.

3.4 Modes of Acquisition of Property under Nigerian Customary Law

Under Customary law, there are various ways of owning and acquiring property which have not only been judicially noticed in our courts but have remained the property disposition practice in certain areas till date.

Generally, under Native law and custom, land did not belong to a single individual. It was vested in a community as a whole, the village or in the family (the extended family) as a group. The individual members of the community or family only had rights to use land. In the celebrated case of *Amodu Tijani v Secretary of Southern Nigeria*[18] , the evidence given and (accepted by the Court) was that the traditional belief is that "*land is conceived as belonging to a*

[18] (1921) AC 399 at 404

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vast family of which many are dead, few are living and countless members yet unborn". The concept of land ownership in Nigeria is encapsulated by the opinion of Viscount Haldane at the Privy Council where he said:

> *The next fact which it is important to bear in mind in order to understand native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, village or family have an equal right to the land but in every case the chief or headman of the village or community or head of the family has charge of the land and in loose mode of speech is sometimes called the 'owner'. He is to some extent in the position of a trustee and as such holds the land for the use of the community or family. He has control of it and any member who wants a piece of it to cultivate or build upon goes to him for it. But the land so given remains the property of the community or family.*

One can see that, in the past, access to land by the natives was straight forward. Land was used primarily for subsistence and not for commercial purposes and as such every member of the community had an innate right to use land. However, the individual's right in the community land is of a limited nature, since absolute ownership is vested in the community as a whole. A member of the community was entitled only to use and occupy the portion of land which the Head of the community or head of family allocates to him. He had a right of exclusive possession over the land allocated to him and could maintain an action for trespass against other members of the family interfering with his possession.

A comprehensive statement of the rights of an individual vis-a vis family land was stated in *Lewis v Bankole*[19] . This was a case in which the Plaintiffs (grand-children of a native) who had inherited partitioned lands given *inter-vivos* to their parents, also sought to participate in the sharing of profits from family land. Other family members (defendants), disputed this claim on

[19] supra

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the ground that they had resided in the family land for over 30 years without let or hindrance from the Plaintiff and as such they were absolute owners to the exclusion of the Plaintiffs.

Speed, Acting CJ in the Lower Court, favoured the defendants claim, on the ground that by *"tacit mutual arrangement and acquiescence of all parties extending over a number of years these various properties have been separated and come to be considered as separately owned"*. He sought to avoid throwing *"the property into the melting pot of an acrimonious family feud*".

On appeal, Osborne CJ disagreed. He recognized the rights of the grandchildren to the family compound jointly with the defendants. Family ownership had not been determined and as such it was held that the Plaintiffs were entitled to share in profits equally; the different branches of the founder's family would be represented per stripes in the family council, each branch having one vote. The Plaintiffs had no right to build on the land without the consent and allocation by the family; and not being ordinarily resident in the compound they had no right of ingress or egress save the right to attend to safeguard their interest in the land (subject to the occupants right of quite enjoyment); and, no member had a right to enter family land which was already allocated to another member.

A member cannot alienate his own plot to third parties or dispose of it by a Will to his children without the consent of the family. In *Taylor v Williams*[20], it was held that a member's right inures for his life time only, but generally the family will permit transmission to his descendants. A member's portion cannot be used as security or attached for the payment of his personal debt.

3.4.1 Deforestation

It seems to be clear that, under customary law, land may be acquired *inter alia* by deforestation. Pursuant to this custom, the first person who deforested a virgin land became the

[20] (1935) 12 NLR, Page 67

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founder and owner of such piece of land. It is also not disputed that upon the death of such an owner, his successor, on the performance of his burial ceremonies, acquired the deceased's property, including his land by inheritance.[21] This principle is also the same as in circumstances where the first settler on a piece of land is deemed to be the owner of that land, Such that any subsequent person that wishes to occupy the land must lease same from the first settler.

3.4.2 Inheritance

This is another mode of acquisition of land under Customary law, where the child takes over land belonging to his or her deceased parents. This form of property acquisition has been the bedrock of certain judicial pronouncements, in that it usually deprives a female heir her entitlement and had to be brought before the court; and our courts do not hesitate to decide the cases in line with the dictates of the law. A good example of this is the case of Asika v. Atuanya.[22]

3.4.3 Gift

As stated earlier, alienation of land under customary law may take various forms. The owner may merely make a gift absolutely to a third party. A gift can come in the form of donation or present. Once made, the ownership of the chattels transfers to the other party. There may also be what is called a conditional gift.

A gift of land could either be absolute or conditional. An absolute gift is as good as sale as it totally divests the owner of all his interests in the land. A party claiming absolute gift must prove that in fact there was absolute gift of land and not a conditional gift. That was the position in Isiba v. Hanson and Anor.[23] It was held in the case of Jegede v Eyinogun[24], that a family

[21] *Eigbejale v. Oke* (1996) 5 NWLR (Pt. 447) 128 at 136
[22] (2008) 17 NWLR (Pt.1117), 484 at 487
[23] (1967) NSCCS
[24] (1959) 5FSC 270

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which had made an absolute transfer of its land by way of gift could not recall the land upon misconduct.

A conditional gift on the other hand only transfers occupational rights to the tenant and not ownership. He is known as customary tenant while the owner becomes his overlord. He holds the land for an indefinite period of time, unlike tenancy under English law which is for a term of years, under customary law, the customary tenant's tenure is perpetual subject only to good behavior and periodic payment, as the case may be. The land is inheritable by his children, but he must not sell or part with possession of the land.

In the case of Etim v Eke[25], Martindale J held thus:

> *It is now settled law that once land is granted to a tenant in accordance with Native Law and custom whatever be the consideration full rights of possession are conveyed to the grantee. The only right remaining in the grantor is that of reversion should the grantee deny title or abandon or attempt to alienate.*

3.4.4 Acquisition by Sale

This is where land is acquired by payment of money or money's worth. Before the advent of monetary exchange for goods and services, land was purchased by Barter system. Until recently, it is unthinkable to the family or communal land owner to alienate land, it was believed that land belongs to the present and future generations unborn and so it is so secured that nobody believed that it could be sold. It is usually given out temporarily, and could be recalled at any time, or even where it is understood that foreigners occupy the land as tenants, the understanding is always that the land ultimately belongs to the family as overlords. This attitude has led many observers to opine that land cannot be alienated under Customary Law.[26]

[25] (1941) 16 N.L.R 43 at 50

[26] National Open university of Nigeria, Course Note on Land Law 1 (LAW 421), School of Law, Ed. Idowu Adegbite, 2013, pp. 37

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However, with the advent of colonialism, and improvement in commercial activities, influx of foreigners to cities, the initial and old idea that land is in alienable began to change and also judicial attitude. In the case of Oshodi v Balogun[27], the Privy Council observed as follows:

> *In the olden days it is probable that family lands were never alienated; but since the arrival of Europeans in Lagos many years ago, a custom has grown up of permitting alienation of family land with the general consent of the family and a large number of premises on which substantial buildings have been erected for purposes of trade or permanent occupation have been so acquired…. Their lordships see no reason for doubting that the title so acquired by these purchasers was an absolute one and that no reversion in hand of the chief was retained.*

A sale is the permanent transfer of land for money or money's worth. It is an act that permanently deprives the original owner from all interests' benefits and claims on the landed property, and he ceases to be recognized as the owner thereof.[28] The mere exchange of money is not conclusive proof of sale, there must be no doubt as to the intentions of the parties, the transaction must be conclusive, and the intentions must be genuinely for the purpose of parting with the entire interest of the owner in the property. Clearly, the person transferring the property must be a person capable of doing so and if he does not have such right, the sale cannot be valid, and the sale is void. In the case of Folarin v Durojaiye[29], the court held that, (1) that there are two clear and distinct ways in which land in Nigeria can be properly and rightly sold, validly acquired, and legally transferred. They are either (i) under customary law or (ii) under the received English law. Each method of sale has its peculiar incidents and formal requirements and failure to observe these incidents of sale may invalidate the purported sale. (2) It is prerequisite to a valid sale under customary law that the purchaser be let into possession. (3) In order to transfer legal title under English law by purchase there must be a valid sale, payment of

[27] (1936) 4 W.A.C.A.1 at 2
[28] National Open University of Nigeria Course Note, Op. Cit. pp. 38
[29] (1988) N.W.L.R (pt. 70) 351

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money accompanied by acknowledgment of receipt and execution of deed of conveyance in favour of the purchaser.[30] (4) Where land is sold under English law or statute law, money is paid and receipts are issued, the purchaser can only acquire an equitable interest if he goes into possession.[31]

There are therefore certain conditions that must be met for a valid sale under Customary law as stipulated in the case of Okonkwo v Dr. Okolo[32] follows:

(1) The person selling must have the title under Native Law and custom, to sell and dispose of the property. (2) The purchase must be concluded in the presence of witnesses who also witnessed the actual landing over or symbolic delivery of the land bought by the purchaser. See also the case of Ogunmuyiwa v Odukoya[33] and Ajayi v Jolaosho.[34]

3.4.5 The Wills Law[35]

One of the ways of acquisition of property under customary law is by inheritance, which presupposes testamentary disposition of property to the deceased person's beneficiaries, which in almost all cases includes a woman. There is also what is known as a "WRITTEN CUSTOMARY WILL". There is no consensus on the acceptability of this type of Will in Nigeria. It does appear however that acceptability by the surviving members of the family and the genuineness of the written document purporting to be 'customary Will' may confer some measure of validity on the gifts contained in it.[36]

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[30] See *Erinosho v Owokonoran* (1965) N.M.L.R 479.
[31] See *Ogunbanbi v Abowaba* (1951) 3 W.A.C.A. 222.
[32](1988) 2 NWLR (pt 79) 632.
[33] (2009) All FWLR (pt 454) 1526
[34] (2004) 2NWLR pt 856 at 86.
[35]*Wills* Law Cap.163, Laws of *Kaduna State,* 1991
[36] V. Chigozie, *Nigerian Wills Law*,<http://wingrass.blogspot.com/2013/02/nigerian-wills-law_9802.html>, Accessed on the 12th June, 2014

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A good example of this is the case of *Asika v. Atuanya.*[37]In that case, the Appellants at the trial court, being women, instituted the action to enforce their right to inheritance of their late father's property under the latter's Will. The said property was bequeathed by the testator, Late Michael Amachukwu Atuanya, in his Will to be shared equally by his children namely Paulina, Michael, Fidelis, Catherine, Cordelia and Felicia. The Respondent, who was the surviving male child of one of the Children, Late Fidelis Atuanya, contended that under Onitsha Customary Law, no female child can inherit property of her late father. He claimed to be the only one entitled to the property, being the only surviving male child in the family.

At the High Court, the Appellant sought a Declaration that they, along with the estate of the two other children, were entitled to inherit the property and also sought the partitioning and sharing of the properties to the said beneficiaries. In its judgment, the trial court found in favour of the appellant but refused to grant the orders as to partitioning and sharing of the properties to the said beneficiaries. In its judgment, the trial court found in favour of the appellant but refused to grant the orders as to partitioning and sharing on ground that it could lead to injustice.[38] Dissatisfied with the decision of the trial court, the Appellants appealed to the Court of Appeal. In determining the appeal considered the provisions of Sections 17(1), (2) (a) and (b), (3) (a), 21 (a), 42 (1) & (2) and 43 of the CFRN, 1999.

The Court of Appeal held that held that:

A Custom which disentitles women from inheriting their father's property is contrary to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, which is the basic

[37] (2008) 17 NWLR (Pt.1117), 484 at 487

[38] This action of the learned trial judge prompted a Notable pronouncement in the Lead judgment of Denton-west, J.C.A. where he said "The trial judge was seemingly apprehensive of the fact that if there was a partition of the property, it may lead to a state of anarchy and lack of peace. However, this court enjoins the parties to eschew bitterness and acrimony and conduct their affairs peacefully and without rancour, but with love and respect for one another as members of the same family, that they are reaping the fruits from the same father, whose Will should be respected. Indeed they should abhorany form of violence and observe the rule of law."

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law of the land, essentially superior to all other laws. Customary laws and statutory provisions cannot in any way render the constitutional provisions nugatory. Such Custom is also not in conformity with the Provisions of the African Charter on Human and People's Right (Ratification and Enforcement) Act, CAP 10, Laws of the Federation of Nigeria, 1990. In the instant case, the respondent's contention that the appellants, being women are not entitled to inherit their father's property under the Onitsha custom is contrary to the will of their late father, and provisions of the constitution of the Federal Republic of Nigeria and the African Charter on Human and Peoples' Rights (Ratification & Enforcement) Act. [39]

This commendable decision of the court makes way for female heirs to inherit properties, including landed properties without fear of hindrance on customary grounds and this forms a mode of acquiring property under Customary Law.

Being the Law of a State, a member of the Kaduna Native Community may choose also to be bound by the Wills Law of Kaduna State by making a will, which dispenses with the customs and traditions that may entitle a beneficiary, including the female beneficiaries, from inheriting the deceased person, no matter how repugnant the will may be, in so far as it complies with the wills Law, the deceased person can will his property to anyone he likes.

3.4.6 Written Application to Local Authorities

Another way land is also acquired customarily is by an application in writing to the appropriate authority. From the inception of the Land Use Act, local government authorities, have also devised a means to formalize ownership of land under native law and custom by encouraging a formal application to the traditional ruler through the Plot Allotment Committee in their respective Wards. The Plot Allotment Committee upon receipt of the application, would delegate some of the members to carry out an inspection of the land acquired within the area of

[39] *Asika v. Atuanya* (supra) at 512 - 513; See also the *Adisa v. Oyinwola*(2000) 10 NWLR (Pt. 674) 116.

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their ward to identify that land and ascertain if it was free from dispute and thereafter through Report Search to the Committee on their Inspection.[40] Upon being satisfied about the exact location and dimensions and that the desired plot is dispute free, the Ward Plot Allotment Committee would endorse the application with the above facts and forward it to the relevant authority as recommended. The appropriate authority, upon receipt of the recommended application accords his approval in writing thereon after which the applicant becomes the beneficial owner of the land comprised thereof.[41]

It is not clear however whether payment of allocation fee or a purchase price is recognized under customary law to extend to the formalization era. For example it was held in *Aboyade Cole v S.R. Folami*[42]*, Debisi Djukpan v Rhorhadjor Orovuyovbe*[43] that issuance of receipt for sale of land is unknown to customary law. But the sale and the receipt if coupled with possession and handing over of the land in the presence of the witnesses is a valid sale and creates an equitable interest in land. In that case the parties did not plead hand over of the land by respondent to the appellant in the presence of witnesses so there is no valid sale of land under customary law.[44]

[40] *Onuwaje v. Ogbeide* (1991) 3 NWLR (Pt. 178) 147 at 161 Per Edozie JCA
[41] Ibid
[42] (1956) S.C.N.L.R 180 1 F.S.C 66
[43] (1967) N.M.L.R 287, (1967) All N.L.R 134
[44] See *Folarin v Durojaiye* (1988) 1 NWLR (pt. 70) page 351 S.C

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CHAPTER FOUR:

THE RIGHT OF WOMEN TO INHERIT LAND

4.0 Introduction

The modes of acquisition of properties under Customary laws has been outlined in the preceding Chapter, however these modes are generally applicable only in situations where the custom recognizes the right of women in that area to acquire and own properties. This Chapter concentrates on the rights of women to inherit and own property, particularly as regards paternal property rights, property inheritance rights and rights of women to own property in their matrimonial homes. The subject matter of this Chapter is imperative to the discussion of this work, in that it distills the specific customs under study, particularly those of the Jaba, Bajju, Atyap and Gbagyi customs and analyse them with a view to discover how these rights of women are regarded or violated in these areas.

At times the fact that most of the inheritance conflicts brought to the court, concerning widows, are handled by the customary courts under native law. Customary courts are presided by magistrates and mostly elderly members of society, who may not necessarily be lawyers. In most cases, they would be tempted to apply the customary laws of the land as it is without any recourse to other statutory laws. The same person who may be entitled to benefit from statutory law may be affected negatively due to lack of any formal legal experience by the magistrate.

This Chapter therefore makes a case for the women of the communities under study as far as ownership of land through inheritance is concerned. This is considering the fact that these tribes have little or no regard for litigation in courts of law; and are in some extreme cases, submissively obedient to these customs as akin to enslavement. They generally hold the seemingly misguided impression that they have no option whatsoever but to comply with the

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custom, even if it bars such women from owning property; and in fact believe that it is a taboo not to comply with such custom.

4.1 Right of Women to Inherit Family Property in Southern Kaduna

Inheritance has been defined in the Black's Law Dictionary as to receive property from an ancestor under the laws of intestate succession upon the ancestor's death.[1] Inheritance has been recognized as one of the means of acquisition of properties in Nigeria and the customary positions of the Jabas, Bajjus and Atyaps in this regard will be considered on the one hand, and that of the Gbagyis will be addressed on another. Inheritance in this work refers to property inheritance both in the woman's family and husband's family.

It has been stated that in sub-Saharan Africa, including Nigeria, the idea of a family extends beyond its conjugal members.[2] A *lineage*, or extended family, is a far larger web of relationships in which all members have a common ancestor, either male or female. One's relationship with members of one's extended family may be as important as, and in some cases, more important than, one's relationship with one's spouses and children.[3]

However, this segment of the work considers how the rules of inheritance in the customs under study affect women in the family membership and also formal legal inheritance rules as to the ownership of land during marriage and the inheritance situations of widows in Southern Kaduna tribes under consideration. In rural areas like the core Southern Kaduna communities under study, often persons die intestate and they operate intestate inheritances which were determined by traditional customs.

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[1] Black's Law Dictionary, 8th Edition, Ed. Bryan A. Garner, West publishing Co., 1999, p.798

[2] Edward Kutsoati and Randall Morck, NBER Working Paper Series, *Family ties, Inheritance rights, and Successful Poverty Alleviation: Evidence from Ghana*, Working Paper 18080, National Bureau Of Economic Research, 1050 Massachusetts Avenue, Cambridge, MA 02138, May 2012, <http://www.nber.org/papers/w18080>, Accessed on the 9th August, 2014

[3] Ibid

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In these areas, generally, a deceased man's estate devolves to his children, who are considered his blood kin. Under all the traditional norms, widows have no land inheritance rights, and are often left with no assets because of a traditional presumption that assets acquired during marriage belong to the husband and are meant to be inherited by his children and blood kindred.[4]

Southern Kaduna is a fraction of Kaduna State which generally recognizes paternal rights to own property of the individual citizens in the community, except where such individual is part of the female folk in which case, certain limitations are recognized. Paternal property rights refer to that right which descends or comes from the father and other ascendants, or collaterals of the paternal stock.[5]Paternal Property rights of women in Southern Kaduna are similar, but differ depending on the communities and cultures obtainable in that part of Southern Kaduna.

It is stated earlier that, under the Bajju customs, when a child is born and such child comes as a female, the baby girl is shown a winnowing tray (bibzi) and a headboard (abziyai) which indicates her winnowing and carrying firewood.

This generally shows the place of a woman under the strict Bajju customs, in that they are basically seen as housewives. The Bajjus have already imported the "abvoi" worship from probably among the Kadara people and believe that God has already established things in the best way they should possibly be.[6] They usually don't associate women with ownership of land but rather see them as housewives or as chattels that could be possessed.[7]

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[4] Ibid

[5]Farlex Free Online Dictionary, <http://legal-dictionary.thefreedictionary.com/Paternal+property>, Accessed on the 5th August, 2014

[6]Duniya J., A Civil Servant, Interviewed in his Residence at Graceland, Hanwa, Zaria, on the 14th December, 2013

[7]ibid

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The Atyaps on the other hand believe strongly in the *Aku,* custodian of the paraphernalia of the *Abwoi* religion. Under the Atyap Customs, the *"stwai-yuan*[8]*"* is usually declared once in a while by the Abwoi to control the women. Thus, the people have great confidence in the *Abwoi* religion, they believe that the *Abwoi* possessed mythical powers and when called upon provided the community with protections and immunity against various infections and in terms of evil.[9]

Each of the Atyap kindred that make up the clans or sub-clans has a recognized social and religion chief like the *Magaji Alanowum* though not necessary the oldest in kindred and the possible figure of the hereditary position.[10]

However, the Atyaps and the Bajjus are similar when it comes to property inheritance rights of the female members of their families. They also share similar view with the Jabas that limit inheritance of family land, but allow for acquisition of land by outright purchase either with money or money's worth, like may be done in the case of any other form of trade in the community, in the absence of any commercial right restrictions except in special cases.

In most Southern Kaduna tribes, a girl child is usually betrothed at a very tender age, and as such, not eligible to inherit land from her family.[11]This has been the practice of core Jaba, Bajju, Gbagyi and Atyaps before the coming into force of the Nigerian Constitution and in fact till date in areas where the girls are totally submissive to customs and see no reason to challenge same either out of ignorance of the extant statutory regulations that guarantee her right to own

[8] This literally means the year of the rope. During this period, women for the first six months of the year were restricted in their dress and travelling after which there will be a celebration for the loosening of the restriction.
[9]Kantiok K.,A Farmer Interviewed at his Residence at Kafanchan, on the 16th November, 2013.
[10] Meek, C.K., Kataf and their Neighbors: Tribal Studies in Northern Nigeria, Frank Cass and co ltd, London, (1978) p4-5.
[11] Ibid

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immovable properties in Nigeria or in apprehension of the orchestrated repercussions for challenging these beliefs[12].

This belief of the Bajjus and Atyaps is predicated upon the fact that properties inherited from the family are not transferrable to her husband's house.[13] The reason for this is that the Bajjus and Atyaps have a Competitive Custom and as such, where a woman is allowed to transfer landed properties to her husband's house, the properties will be used to make the husband and his people grow, instead of her own immediate family before marriage.[14]This is however without prejudice to her right to acquire land by purchasing same from other members of the community.

This accounts for the reason why the tribes under consideration frown at women having real property rights under their native laws and customs. Just as in the case of the Jaba Customs, the Bajjus and the Atyaps customs that restrict a woman's paternal real property rights are repugnant to public policy, in that they violate the law of the land[15]. However, any woman whose right is violated by the compliance with this custom cannot benefit from the protection of the law except she seeks for the enforcement of her right to property before a court of competent jurisdiction.[16]

Therefore, coming home to resolve paternal real property rights of women among the Bajjus and Atyaps, it will be realized that, they violate the provisions of the CFRN, 1999 (as amended) and if eventually tested before a court of law, will be declared null and void for creating limitations for the enjoyment of this right by women.

[12] Under the Bajju and Atyap Customs, it is believed that when a woman challenges the dictates of their customs, she is bound to suffer some consequences and repercussions for so doing.
[13] Kantiok K.,A. Opcit.
[14] Ibid
[15] Section 42 and 43 of the CFRN, 1999 (as amended)
[16] Federal high Court of Nigeria or a State High Court. See the case of Onyibor Anekwe & Anor v Mrs Maria Nweke (2014) LPELR- 22697(SC)

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This is because, most customs and traditions view the right of a woman to acquire and own land as rights subject to, and dependent upon the status of the woman at a point in time[17]. Once a woman comes of age, the need arises to "marry her out" to another family. When this happens, the real property rights of the woman might be viewed differently from the time she was still within the paternal family. Every custom has its determining basis for this position and this, *inter alia* forms part of what we shall be addressing in this Chapter.

4.1.1. Right of Women to Inherit Family Property under Jaba Custom

The Jaba people are believers in ancestral worship, so much so that they have come to retain a functional role in the world of the living they were ultimately involved with the welfare of the Ham kins group. These Ham chosen elders were the representatives of the ancestors and mediators between the ancestors and the Ham people. Thus close affinity between the Ham elders and the Ham ancestors conferred on the Ham elders some power and authority. They all constitute the Institutional framework at that level for the successful realization and enforcement of the native laws and customs of the Jaba people.

The Shakpo, i.e. elders, are responsible for propitiation of sacrifice since neglect was likely to bring about punishment. The lineage head (Sheing Harro) is chosen to represent them in the society. They organize themselves to share their belongings according to what every family and clan has gotten to avoid class distinction.

There was generally no class distinction and social harmony was maintained. Women knew their status and had no fear of being superseded. The first wife enjoyed her superior position in the family known as (Zhu Har) which means 'mother of the house". Men allocate their wives their own land, Thus, husbands treat their wives equally so that a married woman will

[17]Southern Kaduna in Brief, <http://www.sokadworld.com/know-southern-kaduna/southern-kaduna-in-brief>, Accessed on the 13th August, 2014

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not feel humiliated through any manifestation of favoritism if the man has more than one wife.[18] In other words, whether or not the Jaba women are allowed to own property belonging to their father or other paternal sources, they see that as their status in the society and usually don't object to same. Paternal property rights are not usually accorded to women among the Jabas in the past.[19] This is because it is believed that just as the father of a female child gives a portion of his property to his wives, so also will the female child's husband give a portion of his land to her when she is eventually married to him. The remaining property of the father is reserved for the sons to accordingly own and give a portion of same to their own wives if they eventually get married[20].

This means that under the Jaba Custom, the paternal property rights of women are recognized, but with certain limitations. They are however not accorded paternal real property rights so as not to put the family to shame when any of their sons is eventually married and will need land to share with his wife or wives as the case may be.[21]

It should be noted that some literature publications have distorted facts about the Jaba people and suggested that, the people of Jaba, also known at times and interchangeably as people of the popular Nok village, which also forms part of the Jaba people, mysteriously vanished or went into extinction in about 200 AD.[22] This information is however not true as our interview with G. Shunom and other aged Jaba people in the area revealed that Jabas are still spread across Kaduna State and Nigeria at large just like every other tribe in Nigeria.[23]

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[18]Shunom, G., Op Cit

[19] Jatau, I.B.H, District Head, Forgei, Kwoi, Jaba Local Government Area, interviewed on 8th March, 2014, at his residence in Fogei

[20]Ibid

[21]Shunom, G., Op Cit

[22] Nokculture.com, <http://nokculture.com/>, Accessed on the 12th August, 2014

[23] Ibid

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When the Jaba Custom as aforementioned is laid side by side with the Nigerian legal framework for ownership of property, it will be realized with due respect, that the Jaba customs run afoul of the Nigerian Constitution. The constitution provides that subject to its provisions, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.[24]The constitution did not place any restriction in the form of gender, as a limitation to the enjoyment of this right. Nigerians, including the Jabas have agreed from the inception of the Constitution[25] to abide by same as the grund norm of the land. The same Constitution that preserves Customs and Traditions as existing laws also protect fundamental right and promotes equality of citizens under its Fundamental Human Right Provisions. It will however be an aberration to treat customs as having a superseding edge over Fundamental Rights, more so that plethora of judicial authorities in Nigeria have shown that Fundamental Rights cannot be derogated by any custom in Nigeria.[26] It is not clear however whether inheritance of land is subsumed under **Section 43 of the Constitution of Federal Republic of Nigeria,** to warrant a conclusion that inheritance of land is contemplated under the said provision, regard being had to the explicit provisions of **Section 351 of the Constitution** which preserves existing laws, including the customary laws. To acquire and own immovable property, as we will see in later parts of this work is generally a valid means of acquisition of land under, not only the Jaba Custom, but the other customs considered in this work, i.e. any woman with means can purchase

[24] Section 43 of the CFRN 1999 (as amended)

[25] This is evident from the preamble to the Nigerian Constitution which reads thus:"We the people of the Federal Republic of Nigeria; Having firmly and solemnly resolve, to live in unity and harmony as one indivisible and indissoluble sovereign nation under God, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding; And to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people; Do hereby make, enact and give to ourselves the following Constitution…(emphasis ours)

[26] The cases of Lewis v. Bankole (SUPRA), *Timothy v. Oforka (SUPRA). Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283, e.t.c.

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a land of her choice where there is no form of limitation restricting the vendor from doing so and this sale is valid and enforceable. It is only where she will own land through inheritance that different limitations occur under the Jaba custom and other customary practices considered in this work.

4.1.2 Right of Women to Inherit Family Property under Gbagyi Custom

Property inheritance among then Gbagyis is slightly different from what is obtainable under the other three tribes considered in this work. Generally, where a Gbagyi man is deceased, the right of occupancy passes to the eldest son, brother, or father in the order named. Failing them, the value of the crops is given to the mother or a woman amongst the aged widows.[27]

Under the Gbagyi customs, a female child is not allowed to inherit her late father's land, particularly where there is a surviving male child. The mother holds property in trust for a minor son. It is the custom for the next-of-kin in the male line to inherit the land, while provision is made for the younger children at the discretion of the Sarki and elders.[28]

These practices are subject to slight modifications according to the locality. However, the focus of this work is on the Gbagyis of Southern Kaduna only. In Southern Kaduna, Gbagyis in the area generally uphold the custom that a deceased Gbagyi man's land passes to his eldest son or nearest male heir – if he has none, the value of the crops, but not the land, goes to his nearest female descendant.[29]The farm and all property pass to the eldest surviving brother, failing (in Gbagyi land, this is used instead of 'in lieu of') him to the son, the heir in both cases acknowledging and paying all debts.

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[27] Ishaq M. R. *The Origin Of The Gbagyi Tribe (3), in* Leadership online Newspaper, 11th June, 2014, http://leadership.ng/features/377480/origin-gbagyi-tribe-3, Accessed on the 15th August, 2014

[28] Ibid

[29] This is similar to the practice in Abuja anlysed by Ishaq M. R. in his piece in Leadership Online newspaper of 11th June, 2014

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Should any case of dispute arise, the family is the only unit allowed to settle it. In lieu of sons, brothers inherit in seniority; failing brothers, nephews inherit according to age, irrespective of the status of their fathers. If nephews are of equal age then the son of the eldest brother of the deceased will inherit.[30]

Land can be inherited by a female if she has no brothers, but she must be married, or of marriageable age, otherwise it will pass to the next male heir. Even where this opportunity is given to her, it is given with a hope that she will have a male child who will have the legal title to the land, in which case it is deemed as if she is holding the land in trust for her unborn male child. Thus, a woman can inherit land *per se*, there are conditions attached.[31]

The denial of the property right of women is not only restricted to the aforementioned customs but also exists among the Gwaris. In almost all tribes in Southern Kaduna, women are denied the equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination, such that they experience distinct forms of discrimination due to several circumstances.[32]More specifically, the Gbagyis do not recognize the right of a woman to own landed property save in certain conditions that will be addressed in later part of our discussion. In Gbagyi custom a father cannot give land to his female child to own and possess as hers, particularly where he has a son. The girl-child may be given usufructuary rights, but certainly not the right to legal title to the land.[33] Under the Gbagyi Custom in southern Kaduna, the women do a fair amount of farm

[30] Yohanna, J., A trader, Interviewed in his residence in Sabon Tasha, Kaduna State, On the 8th of March, 2014

[31] Interview of Ibrahim Hassan Mohammed, Secretary Adayilo Entertainment (Producers and Directors of Gbagyi songs and Movies), Kaduna, Kaduna State

[32]Manisuli Ssenyonjo, *Culture and the Human Rights of Women in Africa: Between Light and Shadow*, in Journal of African Law, Vol. 51, No. 1, Published by: on behalf of the Cambridge University Press School of Oriental and African Studies (2007), 39

[33] Interview of Ibrahim Hassan Mohammed, Secretary Adayilo Entertainment (Producers and Directors of Gbagyi songs and Movies), Kaduna, Kaduna State

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work, except in places like Kuta in Niger State[34] where this is not the practice. The women also make pottery for local use and they also grow, dye and weave a little cotton.[35]

The female child is also considered like a stranger to the paternal home in the sense that she is seen as one who will sooner or later vacate the house to her husband's house. But we must recall that in the case of **Mojekwu v. Mojekwu,**[36]Justice Fabiyi held that***, "All human beings-male and female-are born into a free world and are expected to participate freely without any discrimination on grounds of sex….***[37]**

We have mentioned the several laws that forbid discriminatory real property practices and this applies to the Gbagyi custom too that is very strict when it comes to the acquisition of land or landed property by the female folk. But the law as it is now does not care at all what a custom stipulates. So long as the Custom discriminates against, not just a female but even a male gender to entitle them to some benefits, such customs shall be declared null and void and will cease to have the force of law. The courts may in fact go as far as axing some provisions of the law to maintain the mandate of the Constitution and protect the rights of affected individuals.

Taking a look into the South African customs, the Constitutional Court in South Africa, in the case of ***Bhe v. Magistrate Khayelitsha, Shibi v. Sithole, and South African Human Rights Commission v. President of the Republic of South Africa*[38]*,*** consolidated three cases, and took up the ***"constitutional validity of the principle of primogeniture in the context of the customary law of succession".*** Central to the customary law of succession is the principle of male primogeniture. These were three cases brought to the Constitutional Court at the same time.

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[34] Kuta is a Gwari Tribe in Niger State of Nigeria

[35] Ishaq M. R. *The Origin Of The Gbagyi Tribe (3), in* Leadership online Newspaper, 11th June, 2014, http://leadership.ng/features/377480/origin-gbagyi-tribe-3, Accessed on the 15th August, 2014

[36][1997] 7 NWLR 283, 1

[37] Ibid at 409

[38]2004 (1) SA 580 (CC) 1 3 (S. Afr.)

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However, in *Bhe's* case, two minor daughters were ineligible to inherit from their father's intestate estate. Under **section 33 of the South African Black Administration Act 38 of 1927 and Regulation 2(e) of the Administration and Distribution of the Estates of Deceased Blacks**, minor children are not entitled to inherit intestate from their father's estate. The estate thus devolved to the deceased's father, who was named sole heir and successor. Among other sections**, section 23(2) and regulation 2(e)** were challenged in the high court, where both sections were ruled unconstitutional.

Some other sources state that a woman may be allowed to own immovable property in her paternal home under the Gbagyi customs, if it is a gift from her mother.[39] That is to say that if her mother acquires any land from her husband she may transfer same to her daughter as a gift, however this gift is not without conditions as even the mother and the land were also seen as part of the husband's properties. Therefore, since she is strictly bound also by the paternal rules, she may be allowed to hold the land as a female child until she is ready to marry, in which case the land is surrendered to the family before her departure.[40] However where the gift of land is such that it was acquired by her mother via outright purchase, then she is, in most cases, entitled to hold the gift even after getting married, except her mother rescind same. Rescinding of gift is hardly done, particularly where she happens to be the only child of the mother.

4.1.3 Right of Women to Inherit Family Property under the Jaba, Bajju and Atyap Customs

Despite the differences in traditional beliefs, the Jaba, Bajju and the Atyap people, they all still have another feature in common, which is the aspect of inheritance.

[39] Interview of Ibrahim Hassan Mohammed, Secretary Adayilo Entertainment (Producers and Directors of Gbagyi songs and Movies), Kaduna, Kaduna State
[40] Ibid

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In an interview with the Agwam Bajju,[41] i.e. the King of Bajju land, he revealed to us that the Jaba, Bajju and the Atyaps are all descendants of same forefathers and are therefore so close to each other as a community that the customs do not differ at all when it comes to inheritance. Traditionally, under the Jaba, Bajju and Atyap customs, women are not entitled to right of inheritance of land or landed properties, particularly property of their male parents or husbands. Infact, a married woman was herself considered her husband's property and can be inherited by any of his siblings or close relations as the case may be.[42]The case is though different where she acquired the property via purchase from her own personal resources.

These customary practices might be seen to have enjoyed judicial favour in the sense that the courts have in the past made pronouncements on them. For example, the Supreme Court of Nigeria restated the principle that the widow's dealings over her deceased husband's property must receive the consent of the family, and she cannot by the effluxion of time claim the property as her own. She has, however, a right to occupy the building or part of it during her lifetime, but this is subject to her good behaviour.[43] Further, in the case of ***Onwuchekwa v Onwuchekwa***[44] the Court of Appeal refused to reject as repugnant a custom in which a husband is said to own the wife along with her properties.

4.2 Right of Women to Inherit the Husband's Property

4.2.1 Jaba, Bajju and Atyap Customs

Under the customs of these tribes, a married woman, may only, and in very rare cases, enjoy such rights to land of her husband only where she has a male child for him. The said land is usually given in the name of the son she bore for him and not categorically given to her as the

[41] Interview of Agwam Bajju, Mallam Nuhu Bature, Kaduna State in July, 2014

[42]*Onwuchekwa v. Onwuchekwa*[42] the Court of Appeal refused to reject as repugnant a custom in which a husband is said to own the wife along with her properties.

[43]*Nzekwu v. Nzekwu* (*1989*) 2 NWLR (Pt. 104) 373

[44]*Onwuchekwa v. Onwuchekwa*, [*1991*] 5 N.W.L.R. (pt. 194) 739

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wife of the man. Where the son that is her only opportunity to possess a piece of land dies without having any male child or children, the land is seized from her, but there are exceptions to this rule. Where a woman has lived for a very long time with her husband without bearing a child or having only female children, and or is beyond child bearing age, coupled with a very positive attitude that endears her to the community, the husband's family may reciprocate such gesture by allowing part of her husband's property such as a house, and some of his farmlands as a condition to tie her down in the community.[45]

Note, that such a condition exists where there is nobody suitable to inherit her or where she rejects being inherited, but the late husband's family insists on keeping her as part of them. So, she continuous to enjoy such rights to the property for as long as she remains a member of that family, otherwise, the land or landed property will be ceased.

This position is similar to the igbo custom that disentitles a female child to inherit her father which became a subject of litigation in the recently decided case of the Supreme Court between ***Mrs. Lois Chituru Ukeje and 1 other v. Mrs. Gladys Ada Ukeje***[46], where the apex court held that;

> *"Any culture that dis-inherits a daughter from her father's estate or wife from her husband's property by reason of God instituted gender differential should be punitively dealt with".*

The Supreme Court which described the culture as discriminatory, maintained that; ***"The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom."***[47]

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[45] Interview of Agwam Bajju, Opcit

[46] *Mrs. Lois Chituru Ukeje and 1 Other v. Mrs. Gladys Ada Ukeje*, Appeal Number SC.224/2004, judgment delivered on Friday 11th April, 2014

[47] - *Inheritance: How Supreme Court voids discrimination against females in Igbo land,* in Vanguard online news, 24th April, 2014

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In his wisdom, Justice Bode Rhodes-Vivour, who read the lead judgment, held that no matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. His Lordship reversed the long standing Igbo custom in that case which disinherits a female from her father's estate, including his landed properties. The court also maintained that the Igbo Customary Law which disentitles a female child from partaking in the sharing of her deceased father's estate, is in breach of **Section 42(1) and (2) of the Constitution,** a fundamental rights provision guaranteed to every Nigerian. The landmark judgment, therefore, declared the discriminatory customary law, void.[48]

The origin of the case was that Gladys sued the appellants before the Lagos State High Court, claiming that as one of the children of the deceased, she said she ought to be included among those to benefit from the family estate. In its verdict, the trial court, found that she was indeed a daughter to the deceased and that she was qualified to benefit from the estate of their father who died in1981. Dissatisfied with the decision, Mrs. Lois and Enyinnaya Ukeje took the case before the Court of Appeal in Lagos, where the lower court judgment was also upheld.

The case was later taken before the Supreme Court for adjudication and the Supreme Court, affirmed the decisions of the lower courts and voided the law and custom of Igbo's that deny the girl-child the right of inheritance.

The Supreme Court ruling is a victory for gender equality in Nigeria. Although the implementation of the judgment is likely to be fraught with difficulties because the inheritance custom voided by the court in this case is deep-rooted and likely to be resisted by the men folk in traditional communities. This case serves as an eye opener and a caveat to caution the affected

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See more at: http://www.vanguardngr.com/2014/04/inheritance-supreme-court-voids-discrimination-females-igboland/#sthash.P77wFJ9F.dpuf, Accessed on the 13th August, 2014

[48]*Mrs. Lois Chituru Ukeje and 1 Other v. Mrs. Gladys Ada Ukeje*, SUPRA, see also *Supreme Court verdict on Igbo women's inheritance rights,* The Sun online Newspaper of 30th April, 2014, http://sunnewsonline.com/new/?p=61605, Accessed on the 12th August, 2014

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communities to embrace regulatory provisions of equality for males and females on inheritance issues, in line with the provisions of the United Nations Universal Declaration of Human Rights and the constitution of Nigeria and those of many other nations.

The custom considered in the case reported above is similar to the customs of the Jaba, Bajju and Atyap customs and therefore, these tribes should revise any of their customs that for any reason denies a woman her right to inherit from her father. That custom which so provides will, whenever it is tested before a court of competent jurisdiction, be rendered null and void and inconsistent with the extant provisions of the Constitution and other international laws for which Nigeria subscribes.

Also, the **Land Use Act** under **Section 24** thereof encourages the devolution of customary right of occupancy guaranteed therein upon death in accordance with the customary laws of that area. **Section 24** provides that;

> *"The devolution of the rights of an occupier upon death shall -*
>
> *(a) in the case of a customary right of occupancy, (unless non customary law or any other customary law applies) be regulated by the customary law existing in the locality in which the land is situated; and*
>
> *(b) in the case of a statutory right of occupancy (unless any non customary law or other customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of property of like nature to a right of occupancy:*
>
> *Provided that -*
>
> *(c) no customary law prohibiting, restricting or regulating the devolution on death to any particular class of persons or the right to occupy and land shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rule of inheritance of any other customary law"* (emphasis ours)

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The proviso to this section cited above emphasizes that where such custom recognized under paragraph (a) is discriminatory, it will not enjoy the privilege accorded to customs under the paragraph and accordingly such custom prohibiting, restricting or regulating the devolution on death to any particular class of persons or restricting the right to occupy land shall operate to deprive any person of any beneficial interest in such land to which he may be entitled under the rule of inheritance of any other customary law, shall be null and void.

4.2.2 Gbagyi

The woman can only inherit her husband's land or part of same if she has a son for him. In some cases, since the tradition is also that the widows pass to the brother of their deceased husband, even though they are at liberty to marry any man they choose. The reasoning behind this is to ensure and secure the properties of the deceased husband within the husband's family. Where the wife chooses to re-marry, she will be dispossessed of the landed properties of her late husband before proceeding to the new husband's house so that when she has a son, the son will not return to control the property for the benefit of his own father from another family or clan.[49] She can only own land where she purchases it with her money or money's worth, i.e. by barter system which was the practice obtainable in trade relationships in the areas under study.

Under some Gbagyi customs, though not common to the Gbagyis of Southern Kaduna, the eldest son inherits everything, including his father's widows. Failing him, the younger brother inherits and failing him the property is divided amongst the widows and children.[50]

Relating these incidences to the subsisting law where similar customs are tested vis-à-vis the current position of the laws, one may be able to ascertain the probable attitude of our courts

[49] Ibid

[50] M.R. Is'haq , The Origin Of The Gbagyi Tribe (3), Leadership Newspaper online, 11th July, 2014, http://leadership.ng/features/377480/origin-gbagyi-tribe-3,

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where these customary practices are tested. In the Nigerian case *Mojekwu v. Mojekwu*[51], under the Nnewi custom, if a man dies leaving male issue, the male child inherits the deceased's property. However, if the man leaves no male issue, the man's brother will inherit his property. If the male issue who survives the father dies, leaving no male issue, the father's brother inherits the property, and on it goes along the male line only. In this case, the son of the deceased's late brother inherited the property of his relation to the exclusion of the daughter of the deceased. The Nigerian Court of Appeal found the Nigerian custom that effectively prevented female family members from inheriting property repugnant to the principles of natural justice, equity, and good conscience. The court held that all human beings ***"are born into a free world and are expected to participate freely, without any discrimination on grounds of sex."***[52]In the opinion, Justice Tobi noted;

> *"Any form of societal inhibition on grounds of sex, apart from being unconstitutional, is antithesis to a society built on the tenets of democracy which we have freely chosen as a people. . . .*
>
> *Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the 'Oli-Ekpe' custom of Nnewi is repugnant to natural justice, equity and good conscience."*

Another very important but secondary factor for the determinant of repugnancy or otherwise of a customary practice that disarms a female child of her right to own immovable properties such as land is the cultural background of the judges who decide on the customary practices. For example, Niki Tobi JCA (as he then was) in ***Mojekwu v. Mojekwu***[53]gave a wise decision when he said;

[51] SUPRA
[52] Ibid at 304 -305
[53] SUPRA

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> *"We need not travel all the way to Beijing to know that the Nnewi Oli-ekpe Custom is repugnant to natural justice, equity and good conscience."*

This pronouncement has been rejected by the Supreme Court by Uwaifo JSC in ***Mojekwu v. Iwuchukwu***[54]**,** on the principle of fair hearing;

> *"I cannot see any justification for the court below to pronounce that the Nnewi native custom of Oli-ekpe was repugnant to natural justice, equity and good conscience ... it would appear, for these reasons, that the underlying crusade in that pronouncement went too far to stir up a real hornet's nest even if it had been made upon an issue joined by the parties. I find myself unable to allow that pronouncement to stand and in the circumstances, and accordingly I disapprove of it as unwarranted."*

The above pronouncement would appear to cut short the gender celebration in ***Mojekwu v. Mojekwu.***[55]Apart from reasons of fair hearing, Onuoha in his work did not subscribe to **Uwaifo JSC's** pronouncement. We agree totally with Onuoha's position in the sense that the decision of Uwaifo JSC might have been prompted by his Igbo background. Aside from the fact that Nigeria is part of the international community, it is very difficult to rationalize the views of Uwaifo JSC with the African Charter, Protocols, and Conventions for the Elimination of all kinds of Discrimination against Women which we have earlier discussed in this work.[56]The stance of the learned Justice Uwaifo JSC in defense of Oli-ekpe is more or less as a result of his background. Therefore, the background of a judge more or less affects his verdict on customary issues. The better approach was that of **Niki Tobi JCA** (as he then was) in forbidding discriminatory inheritance practices in Igbo land against females and burying the Nrachi

[54](2004) 11 NWLR Pt. 883, 248

[55]Onuoha Reginald A., Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue, in *The International Journal of Not-for-Profit Law (IJNL),* Volume 10, Issue 2, published by the International Center for Not-for-Profit Law, April 2008, available on file:///C:/Users/GBENGA%20MAK%20AND%20CO/Desktop/Jane/Ethics%20and%20Civil%20Society%20-%20IJNL%20Vol.%2010,%20Iss.%202.htm, Accessed on the 10th August, 2015

[56] Ibid

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marriage inherent in that custom. This is similar to that of the Gbagyis and therefore, with the advancement in the laws relating to real property acquisition of women in Nigeria and the amendment of existing laws such as the Constitution to flush out in totality all forms of discriminatory practices that may frustrate the right to own and possess immovable property by women hopefully puts an end to this discriminatory customs, not only of the Gbagyis, but also of other tribes in Southern Kaduna and Nigeria at large. Therefore, the notion that women cannot acquire immovable property in southern Kaduna is from the foregoing not completely true as women still have the opportunity to acquire property by outright purchase either by payment of money or money's worth.

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CHAPTER FIVE:

CRITIQUE OF THE RIGHT OF WOMEN TO INHERIT LAND, GENERALLY

5.0 Introduction

In this chapter, the various rights of women to inherit land shall be assessed; which shall include discussing, analyzing and evaluating various laws governing such rights. A critical look shall be taken at the several provisions of those regulations, conventions, frameworks and rules guiding and stipulating these series of rights; with an in-depth analysis of them thereof. The recent trend on the right of women to inherit land will be discussed also with a broad assessment and deliberation on their merits.

5.1 Municipal (Local) Laws

5.1.1 The Nigerian Constitution

The Nigerian Constitution is the grund norm of all forms of legislations in the country. It forms the basis where all legislations derive their strength. Chapter IV of the Constitution relates to Fundamental Rights of Nigerian Citizens. Notably, the Sections are: Section 315 of the Constitution of the Federal Republic of Nigeria, 1999 as (amended). Section 42 of the Constitution which provides for the Right to freedom from Discrimination, and Section 43 of the Constitution which provides for the Right to acquire and own immovable property anywhere in Nigeria.

Section 42 (1) 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:-*
>
> *(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which*

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citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject;"

This provision of the CFRN is emphatic as it stipulates the prevention from discrimination as a fundamental right of every Nigerian Citizen and therefore any law, statutory, judicial precedent or customary law which seeks to discriminate against any person by virtue of his or her sex, among other things, shall be null and void and inconsistent with the Constitution. This provision of the Constitution has formed the basis for numerous judicial decisions and in the case of Chukwu v. Amadi[1]**,** the court decided that the Ikwere Custom[2] that ties inheritance of a deceased to the contribution of the heir to burial rites of the deceased person amounts to discrimination and held that the custom is not only repugnant to natural justice, equity and good conscience[3] but unconstitutional (i.e. a contravention of Section 42of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This provision is relevant to this work as it will operate as a form of inconsistency test in ascertaining the extent of Property right of women in the cultures and traditions under consideration.

Subsection (2) of provides that**;** *"No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth"*. This is another provision that has enjoyed judicial blessings too over time as a basis for the decision of the Court. In the case of Okoli v. Okoli,[4]The case relates to the Mbubu and Nrachi Customs that deprive a child the right to inherit by virtue of the circumstances of his birth. The court held that by virtue of the provision of Section 42 (2) of the CFRN 1999 (as amended), no citizen of Nigeria shall be

[1](2009) 3 NWLR (Pt. 1127) 56 at 84-85, paras F-F. The Court relied strongly on the case of Mojekwu v. Mojekwu (1997) 7 NWLR (512) 283 in reaching the decision in this case.

[2] A custom in Rivers State where only the elder surviving sons of a deceased that contribute to the burial rites of the deceased shall be entitled to inherit the estate of the deceased. See the case of Chukwu v. Amadi (supra)

[3] This test was first laid down in the case of *Lewis v. Bankole* (1908) 1 N.L.R. 81 at 82-83 Per Speed A.C.J., where he held that the native law and custom which the court is empowered or directed to observe must have two essential elements: It must be existing native law or custom and not the native law or custom of ancient times, and it must not be repugnant to Natural justice, Equity or good conscience.

[4](2003) 8 NWLR (Pt.823) 565 at 580.

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subjected to any disability or deprivation merely by reason of the circumstances of his birth and that the circumstance of birth of the 1st Respondent, Reginald Okoli cannot be a bar to his legal and properly proven rights.

The provision of Section 42 of the CFRN 1999 (as amended) forms the bedrock of the fundamental right to freedom from discrimination of whatever nature in Nigeria.

According to Section 43 of the CFRN 1999 (as amended);

> *"Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria".*

This was the bedrock for the decision of the court in the celebrated case of *Timothy v. Oforka*[5] where it was held that by virtue of the provision of Section 43 of the 1999 Constitution, every Citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria and that the *Oraifite*[6] Native Law and Custom was not only unconstitutional, but repugnant to natural justice, equity and good conscience.

Further to the above and a fundamental provision of the Constitution relevant to this topic is the provision of Section 315 of the CFRN 1999 (as amended) which provides that:

> *(1) "Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be -*
>
> *(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and*
>
> *(b) a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws".*

[5] (2008) 9 NWLR (Pt. 1091) 204 at 216-217

[6] A custom in Anambra State where women are not allowed to deal in land. See *Timothy v. Oforka (SUPRA). See also the case of Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283

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This means that every custom and tradition that exist before the coming of the Constitution, in so far as it does not violate any provision of the Constitution are by this provision saved and deemed to be of the same force with an Act of the National Assembly or the laws of a state. In other words, any Custom that is inconsistent with the constitution on grounds of repugnancy, inconsistency or incompatibility shall be declared null and void by a Court of law or tribunal established by law.[7]

This provision preserves all customary laws in Nigeria, which existed before the Nigerian Constitution came into force. By this provision therefore, such Laws would be deemed to be "existing laws" and the Constitution defines "existing law" under Section 315 (4) (b)as follows:

> *Existing law means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date.*

Therefore, once a custom can be shown to be existing, then the other test will be to find out if same passes the repugnancy test. For example, in the case of *Muojekwu v Ejikeme*[8] the Court of Appeal held that a female child could inherit from the deceased father's estate in Igbo land without the performance of the *Nrachi* ceremony. *Nrachi* is a ceremony in which a man keeps one of his daughters at home unmarried for the rest of her life to raise issues, especially males, to succeed him. After a daughter performs this rite, she takes the position of a man in her father's house. Technically, she becomes a "man". In that case, the court took liberty to interpret the constitutional nature of freedom from discrimination vis-à-vis the "*ili-ekpe* or *Oli-ekpe*

[7] Section 315 (3) Nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other law, that is to say-

(a) any other existing law;
(b) a Law of a House of Assembly;
(c) an Act of the National Assembly; or
(d) any provision of this Constitution.

[8] (2000)5NWLR (pt 657) at 402

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custom of Nnewi that does not recognize female inheritance unless *Nrachi* ceremony has been performed on the female. The Court held that: by 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 which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject. Consequently, the court held that such a customs clearly discriminated against the daughter of the deceased who did not perform the ceremony and is therefore unconstitutional in the light of the provisions of section 42 of the Constitution of the Federal Republic of Nigeria, 1999.The court refused to apply the custom and declared it repugnant to natural justice, equity and good conscience in that it legalizes fornication and encouraged prostitution, as the women remains unmarried procreating outside the bounds of marriage.

Similarly, other discriminatory customs against women were tested in the courts in the case of *Mojekwu v Mojekwu*[9] the Court of Appeal Enugu held that the **"***Oli-ekpe*" custom of Nnewi in Anambra State under which male children only inherit their father's property is unconstitutional. Niki Tobi J.C.A delivering the lead judgment asked the following questions;

> *"Is such a custom consistent with equity and fair play in an egalitarian society such as ours? Day after day; month after month and year after year, we hear of and read about customs, which discriminate against women in this country. They are regarded as inferior to the men. Why should it be so?"*

According to the learned Justice of the Court of Appeal:

> *All human beings-male and female-are born into a free world, and are expected to participate of freely, without any inhibition on grounds of sex; and that is constitutional. Any form of societal discrimination on ground of sex, apart from being unconstitutional*

[9] supra

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> *is antithesis to a society built on the tenets of democracy, which we have freely chosen as a people. We need not travel all the way to Beijing to know that some of our customs, including the Nnewi "Oli-ekpe" custom are not consistent with our civilized world in which we all live today. In my humbly view, it is the monopoly of God to determine the sex of a baby and not the parents. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront, I have no difficulty in holding that the "Oli-ekpe" custom of Nnewi, is repugnant to natural justice, equity and good conscience.*

Other cases worthy of consideration include the case of *Nezianya v Okagbue*[10] the court held that under the native law and custom of Onitsha, a widow's possession of her deceased husband's property is not that of a stranger, and however long it is, it is not adverse to her husband's family and does not make her the owner, she cannot deal with his property without the consent of his family. Further, if a husband dies without a male issue, his real property descends to his family, and his female issue does not inherit it, according to custom. Also in the case of *Nzekwu v Nzekwu*[11]**,** the Supreme Court of Nigeria restated the principle that the widow's dealings over her deceased husband's property must receive the consent of the family, and she cannot by the effluxion of time claim the property as her own. She has, however, a right to occupy the building or part of it during her lifetime, but this is subject to her good behaviour. Further, in the case of *Onwuchekwa v Onwuchekwa*[12] the Court of Appeal refused to reject as repugnant a custom in which a husband is said to own the wife along with her properties.[13]

5.1.2 Land Use Act[14]

Under the Land Use Act, Sections 5 and 6 recognizes statutory right and customary right of occupancy. This means that from the inception of the Land Use Act, the law recognizes and

[10](1963) 1 ALL NLR 352
[11](1989)2 NWLR (Pt. 104), 373
[12](1991)5 NWLR (Pt. 194) 739 at 750
[13] See also Francis O. Anaeme, *Position under Nigerian Laws,* <http://www.webpages.uidaho.edu/~mbolin/anaeme.htm> Accessed on the 12th June, 2014
[14] CAP L5, Laws of the Federation of Nigeria, 2004

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respects customary right of occupancy pursuant to Section 6 of the Land Use Act. This is relevant in the discussion on the acquisition of property under common law and custom.

Also, the Land Use Act secures the acquisition of land under customary law by making provisions to be complied with in the event of devolution of right to own property under customary law.

Accordingly, Section 24 of the Land Use Act provides as follows:

Section 24

> *The devolution of the rights of an occupier upon death shall -*
>
> *(a) in the case of a customary right of occupancy, (unless non customary law or any other customary law applies) be regulated by the customary law existing in the locality in which the land is situated; and*
>
> *(b) in the case of a statutory right of occupancy (unless any non customary law or other customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of property of like nature to a right of occupancy:*
>
> *Provided that -*
>
> *(c) no customary law prohibiting, restricting or regulating the devolution on death to any particular class of persons or the right to occupy land shall operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rule of inheritance of any other customary law;*

This is a very commendable provision contained in the Land Use Act, as it seeks to preserve the Customary Laws of the community, while protecting the fundamental right of the citizens in that community. This is because, in the proviso to the said Section 24,gives no effect to any custom that discriminates against the right of ownership of land of any individual member

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of that community, male or female; adult or child. In the case of *Timothy v. Oforka*[15], the court held that the native law and custom of *Oraifite* which discriminates against women's right to own property is repugnant to natural justice, equity and good conscience.

5.1.3 Judicial Decisions

Furthermore, on the part of the judiciary, an attempt has been made very recently by the Supreme Court in a recent decision to further clothe the real property rights of widows with protection. The Southern Kaduna customs disinheriting women/widows is similar to the Igbo custom that disentitles a female child to inherit her father (or wife, from her husband). This was a subject of litigation in the recently decided case by the Supreme Court between *Mrs. Lois Chituru Ukeje and 1 other v. Mrs. Gladys Ada Ukeje*[16]**,** where the Supreme Court held that:

> *"Any culture that dis-inherits a daughter from her father's estate or wife from her husband's property by reason of God instituted gender differential should be punitively dealt with".*

The Supreme Court which described the culture as discriminatory maintained that***; "****the punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom."*[17]

In his wisdom, Justice Bode Rhodes-Vivour, who read the lead judgment, held that no matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. His Lordship reversed the long standing Igbo custom in that case which disinherits a female from her father's estate, including his landed properties.[18] The

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[15] supra

[16] *Mrs. Lois Chituru Ukeje and 1 Other v. Mrs. Gladys Ada Ukeje*, Appeal Number SC.224/2004, judgment delivered on Friday 11th April, 2014

[17] - *Inheritance: How Supreme Court voids discrimination against females in Igboland*, in Vanguard online news, 24th April, 2014Available at: http://www.vanguardngr.com/2014/04/inheritance-supreme-court-voids-discrimination-females-igboland/#sthash.P77wFJ9F.dpuf, Accessed on the 13th August, 2014

[18] See also Mojekwu v. Mojekwu (1997) 7NWLR, (Pt. 284), Mojekwu v Ejikeme (2000) 5NWLR (Pt.657) 403

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landmark judgment, therefore, declared the discriminatory customary law, void.[19] The origin of the case was that Gladys sued the appellants before the Lagos State High Court, claiming that as one of the children of the deceased, she said she ought to be included among those to benefit from the family estate. In its verdict, the trial court, found that she was indeed a daughter to the deceased and that she was qualified to benefit from the estate of their father who died in1981. Dissatisfied with the decision, Mrs. Lois and Enyinnaya Ukeje took the case before the Court of Appeal in Lagos, where the lower court judgment was also upheld.

The case was later taken before the Supreme Court for adjudication and the Supreme Court, affirmed the decisions of the lower courts and voided the law and custom of Igbo's that deny the girl-child the right of inheritance of her father's property.

The Supreme Court ruling is a victory for gender equality in Nigeria. Although the implementation of the judgment is likely to be fraught with difficulties because the inheritance custom voided by the court in this case is deep-rooted and likely to be resisted by the men folk in traditional communities. This case serves as an eye opener and a caveat to caution the affected communities to embrace regulatory provisions of equality for males and females on inheritance issues, in line with the provisions of the United Nations Universal Declaration of Human Rights and the constitution of Nigeria. This is the most likely, or in fact most probable result of testing the Jaba, Bajju, Atyap and Gbagyi customs that disentitles women from inheriting their late husband's land. After being declared repugnant, the court may proceed to hold the said custom as inconsistent with the Constitution and such customs held as such, would be knocked off and

[19]*Mrs. Lois Chituru Ukeje and 1 Other v. Mrs. Gladys Ada Ukeje*, SUPRA, see also *Supreme Court verdict on Igbo women's inheritance rights,*
The Sun online Newspaper of 30th April, 2014, http://sunnewsonline.com/new/?p=61605, Accessed on the 12th August, 2014

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the perpetrators of the dastardly act would be brought to book, more so that a new law will soon be in place to prosecute them criminally, thereby strengthening the enforcement of this decision.

5.2 International laws

5.2.1 The United Nations Convention on the Elimination of all kinds of Discrimination against Women of 1979

The violation of women's property rights is a common phenomenon in many cultures in Nigeria and Africa as a whole. Property rights are the right to own, acquire (through purchase, gift or inheritance), manage, administer, enjoy and dispose of tangible and intangible property including land, house, money, bank accounts, livestock, crop and pensions.[20] Under international human rights law, women and men are entitled to equal legal protection of their property rights. However, in practice, property ownership, use and inheritance are regulated in many countries by customary laws - mostly unwritten but influential local norms that are based on gender distinctions.[21]The violation of the property rights of women in the paternal family and that of married women and widows in the matrimonial family will be considered within the context of some Nigerian cultures in this work.

The Convention on the Elimination of All Forms of Discrimination against Women2 (the CEDAW) establishes standards for achievement of women's human rights essentially by outlining all the areas in which obstacles exist and stating the norm of equality in each area[22]. The CEDAW represents something of a breakthrough in human rights thinking, in that certain articles specifically refer to the structural issues that must be confronted.

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[20]Adebola A. M. and Olotuah A. O. Violation of Women's Property Rights within the Family in *Agenda: Empowering Women for Gender Equity*, No. 66, Gender-Based Violence Trilogy Volume 1,1: Domestic Violence, Published by: Agenda Feminist Media, (2005), pp. 58-63

[21] Ibid

[22] Marsha A. Freeman, The Human Rights of Women under the CEDAW Convention: Complexities and Opportunities of Compliance; in; *Proceedings of the Annual Meeting* (American Society of International Law), Vol. 91, Implementation, Compliance and Effectiveness (APRIL 9-12, 1997), Published by American Society of International Law, pp. 378-383. See also <http://www.jstor.org/stable/25659151>; Accessed on the 12th June, 2014

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This is because despite significant achievements in the quest for women's equality, and in particular the entry into force of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[23] which was accepted by 185 states by October 2006, ensuring gender equality in all states remains an enormous challenge.[24]

The pursuit of equal rights for women through international law has been a slow process. The principle that everyone is entitled to rights *"without distinction of any kind, such as race, colour, sex..."* was given voice in Article 2 of the 1948 Universal Declaration of Human Rights. However, it took campaigners over 30 years to cajole the international community into enforcing the declaration and mapping out a concrete legal action against gender injustice. This commitment came in the shape of the Convention to Eliminate All Forms of Discrimination against Women (CEDAW) which was adopted by the UN General Assembly in 1979. CEDAW has been described as a bill of rights for women. It spells out the areas in which women experience discrimination and commits countries to amend their laws, construct national gender policies and create institutions to deliver them. Although CEDAW has been ratified by almost all countries, ineffective enforcement of national legislation has further restrained the pace of reform.

Resistance to new laws and their implementation in developing countries is motivated by strong traditional beliefs that women should occupy a domestic environment and that men should enjoy exclusive rights to property. Modern industrialized countries have of course experienced similar attitudes at earlier stages of their development. Many countries in sub-Saharan Africa, including Nigeria are in the process of amending laws which prevent women from owning land

[23] Resolution cited as GA res 34/180, 34 UN GAOR Supp (No 46) at 193, UN Doc A/34/4.
[24]Manisuli Ssenyonjo , Culture and the Human Rights of Women in Africa: Between Light and Shadow; in *Journal of African Law*, Vol. 51, No. 1 (2007), Published by Cambridge University Press on behalf of the School of Oriental and African Studies Stable, pp. 39-67. See also the link <http://www.jstor.org/stable/27607978> Accessed on the 27th May, 2014

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and property. This transition to more equal rights is most problematic in Islamic countries where elements of Sharia law governing the behaviour of women remain in place. In extreme examples, these ancient laws claim that adultery is a crime when carried out by women, and make it virtually impossible for a man to be convicted of rape.

Article 1 of CEDAW provides as follows:

> *Discrimination against women' means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.*

Many multi-national organizations and bodies have also acknowledged the importance of this and other sister legislations to the protection of women's right all over the world, like the American Bar Association, and a host of other bodies.[25]

5.3 Regional Laws

5.3.1 The African Charter on Human and People's Right.[26]

The African Charter on Human and Peoples Right guarantees the fundamental right of Africans in so far as the state ratifies the Charter.

In other words, once a state ratifies the Charter its citizens are deemed to be protected by the provisions contained therein**.** Article 2 of the 1948 Universal Declaration of Human Rights provides that:

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

[25]American Bar Association has endorsed Federal and State Legislation prohibiting discrimination on the basis of gender See Generally, Anthony Monahan, *Committee Profile: Rights Of Women*, in *Human Rights*, Vol. 16, No. 2, (Summer 1989), pp. 5-6

[26]*African Charter on Human and Peoples' Rights* ("Banjul Charter"), 27 June 1981.

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Article 3also provides that:

1. *Every Individual shall be equal before the law*
2. *Every individual shall be entitled to equal protection of the law*

Article 14 provides that:

> *"The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."*

Article 18 provides under Sub section (3) that –

> *The State shall ensure the elimination of every discrimination against women and also censure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.*

The African Charter on Human and People's Right (ACHPR) has indeed made many salient provisions not specifically guaranteed in the Nigerian Constitution and as such from the ratification of the said Charter by Nigeria; every Nigerian citizen is entitled to protection of his or her right under the Charter.

It is quite obvious that the ACHPR protects the fundamental rights of individuals in member States that are signatory to the Charter, however, the same ACHPR preserves the customs and traditions of People.

For example, in its preamble, (ACHPR) provides that:

> *Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;*[27]

Article 18 (2) of the ACHPR makes it incumbent upon the state to ensure the preservation of family which is the source of morals and traditional values. It provides thus:

[27] See Preamble to the African Charter on Human and People's Right, 1981.

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> *"The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community."*

It is important to note also that there is an unconscious overlap between traditions and religion under customary law. This means that in a bit to declare a custom as being repugnant, certain traditional beliefs practiced as religion will be violated and the right of religion guaranteed under Article 8shall, at that moment be contravened. Article 8 of the ACHPR provides:

> *Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.*

However, the provision provides a form of restriction by the phrase *"subject to law and order"* used in that Article. Therefore, the CFRN 1999 (as amended) and other laws[28] restrict certain customs on grounds of repugnancy, inconsistency or incompatibility.

The ACHPR contains four main provisions protecting women against discrimination. First is the general non-discrimination clause earlier mentioned and contained in Article 2 of the Charter. Secondly, this is reinforced by Article 3 which deals with equal protection in the following terms: *"1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law"*. Thirdly, for the avoidance of doubt, Article 18(3), which generally deals with the protection of the family, states:

> *The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.*

[28] See also *Section 20 (3) of the Area Courts Law of Kaduna State, 1982*, where it provides that – Nothing contained in this section shall be deemed to preclude the application by an area court of any principle of English law which the parties to any civil case agreed or intended or may be presumed to have agreed or intended should regulate their obligations in connection with the transaction which are in controversy before the court.

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Finally, Article 60 states that the African Commission on Human and Peoples' Rights (the African Commission) will draw inspiration from international human rights instruments (such as CEDAW).[29] We will also be referring to some of these provisions in the course of this work.

5.3.2 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

Article 66 of the African Charter on Human and Peoples' Rights provides for special protocols or agreements, if necessary, to supplement the provisions of the African Charter. The Assembly of Heads of State and Government of the Organization of African Unity meeting in its Thirty-first Ordinary Session in Addis Ababa, Ethiopia, in June 1995, endorsed by resolution AHG/Res.240 (XXXI) on the recommendation of the African Commission on Human and Peoples' Rights to elaborate a Protocol on the Rights of Women in Africa[30]

The protocol, defines discrimination against women as:

> *Discrimination against women means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life*[31]

The protocol was adopted on 11th July 2003 during the Second Ordinary Heads of States and Governments Summit held in Maputo, Mozambique. On 25th November 2005, the Protocol

[29]Ssenyonjo M. Culture and the Human Rights of Women in Africa: Between Light and Shadow, in *Journal of African Law*, Vol. 51, No. 1 Published by: Cambridge University Press on behalf of the School of Oriental and African Studies Stable, (2007), pp. 39-67

[30] See the Preamble to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 1995

[31] Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 1995

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came into force having received the required 15 ratifications.[32] The Protocol protects the civil and political rights of women, their economic, social and cultural rights and also their collective rights. Apart from re-emphasizing and extending UN instruments on human rights of women, the Protocol enshrines the mainstreaming of human rights and gender equality in African affairs. The specific rights protected under the Protocol are, broadly, the rights to: non-discrimination[33]; dignity (Article 3)[34]; life, Integrity and security of the person[35]; equal right in a marriage separation, divorce or annulment of marriage[36]; etc.

Article 5 of the Maputo Protocol, on Elimination of Harmful Practices against women, provides that:

> *States parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States parties shall take all necessary legislative and other measures to eliminate such practices, including:*
> *a…*
> *b…*
> *c. provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting.*

One wonders if codification in a robust form like was done in the Maputo Protocol will be of any overwhelming advantage to those victims of the customary practices at the grassroots, who, in most cases are not educated to know if at all there was any constitution or there was a protection somewhere accorded them. A careful look at other regional regulations vis-à-vis the Maputo Protocol shows that the regional equivalent to Maputo includes the Inter-American

[32]Ssenyonjo M. Culture and the Human Rights of Women in Africa: Between Light and Shadow, in *Journal of African Law*, Vol. 51, No. 1 (2007), pp. 39-67
[33] Article 2 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 1995
[34] Article 3 ibid
[35] Article 4 ibid
[36] Article 6-7 ibid

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Convention on the Prevention, punishment and Eradication of Violence against Women[37]. The Inter-American Convention deals with family law only in terms of general principles and does not cover family law with as much specificity as the Maputo Protocol does. It urges governments to undertake effective measures to combat discrimination, but none of the salient areas addressed in the Maputo Protocol, which includes inheritance. The Asian Charter is comparable to the African Union Charter on Human and People's Rights, but includes a more robust section on women's rights. It too, does none of what Maputo does with specificity. Although the European Court on Human Rights has adjudicated several cases addressing women's rights, the European Union does not have a treaty that extensively covers family law and women's rights.[38]

A group of Legal regulations indeed guarantees women to own, possess and deal with landed property, as opposed to what is obtainable under some traditions.

For example, Article 21 (1) of the Maputo Protocol provides that:

> *"Right of Inheritance*
> *1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her orshe has inherited it." (sic)*

The Maputo Protocol is very explicit on the right of a woman, not only to inherit her late husband but also to acquire via outright purchase and own land either before or after her husband is deceased, including the right to inherit land from his estate. In more specific terms, the Maputo protocol protects women from the oppressive customs that deprive them the right to inherit their parents and husbands. As earlier stated, the Land Use Act also secures the acquisition of land

[37] Also known as the "Convention Of Belem Do Para"
[38] Esimai Chinwe, *The Convergence of Local and International Law: Family Law in the Protocol on the Rights of Women in Africa* in Proceedings of the Annual Meeting (American Society of International Law), Vol. 101(MARCH 28-31, 2007), pp. 138

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under Customary Law by making provisions to be complied with in the event of devolution of right to own property under Customary Law.

The divorce provisions of the Protocol are also worth looking at. Having provided for compulsory registration of marriage, Article 7(a) requires that *"separation, divorce or annulment of a marriage shall be effected by judicial order"*. This provision, together with the one giving men and women the same rights to seek separation, divorce or annulment of marriage, was objected to by some of the North African Islamic states as being incompatible with the Shari'a which allows a man to divorce his wife unilaterally and which provides different grounds for divorce for men and women.[39] This in effect means that even where a marriage is conducted under native law and customs of a particular locality, so long as same is registered, then the parties are absolutely bound by the protocol to that extent without any opportunity of reliance on the native law and custom which they themselves have deviated from. In Egypt, after the coming into force of the CEDAW, they came up with the Egyptian reservation to Article 16[40] of CEDAW, which reads in part*:*

[39] Banda F. Blazing a Trail: The African Protocol on Women's Rights Comes into Force, *in Journal of African Law, Vol. 50, No.1 (2006), p.77.*

[40] Article 16 of the CEDAW provides that- (1). States Parties shall take all appropriate measures to eliminate discrimination against women in all
matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
(a) The same right to enter into marriage;
(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
(c) The same rights and responsibilities during marriage and at its dissolution;
(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable

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> *The provisions of the Sharia lay down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The Sharia therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband.*[41]

Another problem linked to the use of the liberal model of equality based on 'reversing the sexes and comparing' was the objection to men and women having an equal right to share the property of the marriage. Again, in line with its reservation to Article 16 (1) of CEDAW, Egypt was resistant to men and women having the same property rights and made an objection during the drafting process. The final provision in the Protocol on property is as follows: *"in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage"*[42].

Banda raised a question as to whether equitable and equal sharing are the same and made a case for the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) with emphasis on the Paraguay Report. In the latter, where the terms "equal" and "equity" were not synonymous or interchangeable. The aim of the Convention was the elimination of discrimination between men and women and ensuring de jure and de facto equality between men and women. The Committee therefore recommends that the State party use the term 'equality' henceforth.[43] It is arguable though that the terms may be used interchangeably depending on the context of usage. It is worth noting that women often experience discrimination

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consideration.
[41]An Na'im, Islamic Family Law, London, 2003, Banda F. Op. cit
[42]Banda F. Op. cit, P.77
[43] Ibid

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in the allocation of property on divorce with judges minimizing the contribution made by women to the joint family enterprise.[44]

The other area in which women experience discrimination in the allocation of property is on the death of a spouse.[45]Article 21provides that a widow:

> *. . . shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or if she has inherited it.*

5.4 The Recent Trend: The Bill for Prohibition and Treatment

5.4.1 Right of Women/Widows to Property in Southern Kaduna

Southern Kaduna as the name implies is located in the Southern part of Kaduna State of Nigeria. It is made up of numerous tribes, such as the Atyap, Bajju, Gbagyi, Jaba, Kagoro, Koro, Moro'a, and others. Many of these tribes have many characteristics in common, for example, customs and traditions. These include land practices with slight differences. However all the tribes have one feature in common and that is, they don't generally recognize the real property rights of women.[46]

The application of statutory regulations and religious practices in the area, among other things, have influenced the limitation of the practice of these customary rules. However, in some of these areas, the natives have upheld their customs and still apply these customary practices very tenuously.

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[44] The courts in Nigeria are overturning, in most cases, this postulation. They utilize the process of judicial activism to remedy these repugnant customs. See the cases of *Timothy v. Oforka* (SUPRA), *Asika v. Atuanya (SUPRA)*

[45]Adebola A. M. and Olotuah A. O. Violation of Women's Property Rights within the Family in *Agenda: Empowering Women for Gender Equity*, No. 66, Gender-Based Violence Trilogy Volume 1,1: Domestic Violence, Published by: Agenda Feminist Media, (2005), pp. 61

[46] Francis Tambiyi, a Bajju man living in Federal College of Education Staff quarters, An interview with him on 14th December, 2013

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Some of these cultures are enforced through legislation, for example, it has been said that in Nigeria, the Penal Code permits husbands to use physical means to chastise their wives as long as it does not result in "grievous harm"[47]. Grievous harm is defined as loss of sight, hearing, power of speech, facial disfigurement or life-threatening injuries.[48] It was also added that, in most traditional areas of Nigeria, the courts and police have been reluctant to intervene to protect women who have formally accused their husbands of abuse, if the level of alleged abuse did not exceed the customary norms of those areas.[49] This denies women in Africa "the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies" affecting their lives. The right of everyone to cultural participation seeks to encourage the active contribution of all members of society to the cultural progress of society as a whole. As such, it is intrinsically linked to, and is dependent on the enjoyment of, other human rights such as the right to own property, as well as in association with others, and freedom of movement.

The customary practices of the Jabas, Bajjus, Atyaps and Gbagyis affect women's land rights in a context where women play a prominent role in farming activities and where customary inheritance practices do not allow women to inherit land,[50] particularly where such woman is a widow.

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[47] Section 55 of Penal code

[48]Manisuli Ssenyonjo, *Culture and the Human Rights of Women in Africa: Between Light and Shadow* in Journal of African Law, Vol. 51, No. 1, Published by: on behalf of the Cambridge University Press School of Oriental and African Studies, (2007), pp. 52

[49] Ibid at 52, This information is gathered from the US Department of State Country Reports on Human Rights Practices - 2005, Nigeria (8th March 2006, released by the Bureau of Democracy, Human Rights, and Labor, available at http://www.state.gOv/g/drl/rls/hrrpt/2005/61586.htm, (Accessed on the 10th August, 2014). In 2003, 64.5% of women and 61.3% of men agreed that a husband was justified in hitting or beating his wife for at least 1 of 6 specified reasons, including "burning food and not cooking on time", see National Population Commission Nigeria Demographic and Health Survey (2003, National Population Commission and ORC Macro), available at: <http://www.measuredhs.com/pubs/pdf/FR148/00FrontMatter.pdf, Accessed on the 10th August, 2014.

[50]Hussaina J. Abdullah with Ibrahim Hamza, *Women need Independent Ownership Rights: Women and Land In Northern Nigeria*, The Women and Land Studies, Paper Presented at an International Workshop on *Women and Land In Africa*organised by the Emory University Law School, Atlanta, Georgia in collaboration with Associates for Change, Kampala, Uganda at the Entebbe Beach Hotel, 24th -25th April, 1998, available on <http://aannaim.law.emory.edu/wandl/WAl-studies/nigeria.htm>, Accessed on the 14th August, 2014

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We will therefore scan the Nigerian land tenure system for recent developments in the protection of property rights of women in the country, particularly as regards the proposed amendment of Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)[51], the proposed Repugnant Widowhood Practices Bill, 2014[52] with a view to analyze the Bills and make recommendations thereof in line with what is obtainable in the customs under study.

Bills are not laws. Nevertheless, the giant stride made by the National Assembly and some individual members in the National Assembly who sponsored bills to ameliorate the suffering of women with regard to administration of land is timely and worthy of academic research and discussion, even though there is no hundred percent assurance that they will become laws. It is on this ground that this discussion is anchored. In doing this, we will discuss briefly the attitude of the Southern Kaduna tribes under study, particularly the Bajjus and the Atyaps to land ownership by women in their areas, since they have somewhat similar characteristics. Thereafter; we will explain briefly the reaction of people to customary practices of ownership of land by a woman or widow.

It should be noted that under the Jaba, Bajju, Atyap and Gbagyi customs, there are certain limitations to the rights of women to own land in the community by whatever means acquired. The relevant constitutional provisions and other provisions concerning ownership of landed property by women will be looked into in addressing this subject matter.

[51] The Constitution of the Federal Republic of Nigeria (Alteration) Bill, 2014, sponsored by Hon. Olarotimi Mikail Makinde, Nigerian National Assembly, Abuja -FCT.

[52]A Bill for an Act to Prohibit Repugnant and Dehumanising Widowhood Practices in Nigeria and for Related Matters, 2014, *Sponsored by Hon. Charles* C. *Odedo,* Nigerian National Assembly, Abuja –F.C.T.

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For a vivid understanding of this portion of this thesis, a consideration of the definition of a "widow" is necessary. According to the Black's Law Dictionary[53], a "widow is a woman whose husband has died and who has not remarried. Widowhood is the state or period of being a widow.[54]In a traditional sense, a widow is a person who is no longer a wife, by virtue of the death of her husband and who lacks the security of a clearly defined status in the community.[55]

5.4.2 Constitutional Review

The Nigerian government through the legislature is however also making moves to address some of these challenges of land ownership associated with the vulnerable classes of people, including widows in Nigeria, by the means of an amendment of existing laws and enactment of fresh laws. This has led to the proposal to amend the provision of Section 43 of the CFRN 1999[56] (as amended). This section provides that:

> *"Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria."*

The provision sought to be amended by the 2014 Bill referred to above reads thus:

> *BE it ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:*
> *I. The Constitution of the Federal Republic of Nigeria (1999) as amended (hereinafter referred to as "the Principal Act") is hereby altered as follows:*
> *2. Section 43 of the Principal Act is altered to read as follows:*
> *Subject to the provisions of this Constitution, everyone lawfully within the territory of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria without distinction of any kind, such as, race, colour, sex, language, religion, political or other opinion.*

[53]Black's Law Dictionary Eighth edition, Ed. Bryan E. Garner, Thomson West publishers, 2004, p. 1628
[54]Agunwa T. V. , *Bad Widowhood Practices In Nigeria: Its Adverse Effects On Widows,* Journal of Research and Development, Department of CRS, Nwafor Orizu College of Education, Nsugbe, Volume 3 No 1 December 2011, p.145
[55] Ibid
[56] CAP C23, L.F.N., 2004

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In its explanatory notes, the Bill seeks to alter the Constitution of the Federal Republic of Nigeria (1999) as amended to ensure that the right to own immovable property anywhere in Nigeria is granted to everyone lawfully within the territory of Nigeria irrespective of race, birth, colour, sex, language, religion, political or other opinion.

It has over the years become very important to build effective legislative measures to obliterate these repugnant customs that bar widows from inheriting their deceased husbands. Initially, this was not necessarily of any concern to our legislators, particularly as the courts in Nigeria have declared some customs repugnant through judicial pronouncements and also the recent move to amend Sections 42 and 43 of the CFRN1999 (as amended) on ownership of immovable property rights of every Nigerian citizen[57].

This necessitated the need to back these decisions that could be overridden by a subsequent decision from the apex court, by a statutory provision, which perhaps motivated the legislators in Nigeria to come up with the bill at the National Assembly tagged A Bill for an Act to alter Section 43 of the Constitution of the Federal Republic of Nigeria 1999 as amended to guarantee equal rights to property in Nigeria and for other matters connected therewith.[58] In this Bill to amend Section 43 of the CFRN, 1999 (as amended), the provision of Section 43 which is

[57] The Courts in Nigeria have elaborated on the provision of Section 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) in deciding the cases of *Timothy v. Oforka* (2008) 9 NWLR (Pt. 1091) 204 at 216-217, where it was held that by virtue of the provision of Section 43 of the 1999 Constitution, every Citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria and that the *Oraifite*[57]Native Law and Custom was not only unconstitutional, but repugnant to Natural Justice, Equity and Good conscience. See also the case of *Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283. Republic of Nigeria 1999 (as amended). Subsection (2) provides that - No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth. This is another provision that has enjoyed judicial blessings too over time as a basis for the decision of the Court. Similarly, in the case of *Okoli v. Okoli* (2003) 8 NWLR (Pt.823) 565 at 580, which relates to the *Mbubu* and *Nrachi* Customs that deprives a child the right to inherit by virtue of the circumstances of his birth, the court held that by virtue of the provision of Section 42 (2) of the CFRN 1999 (as amended), no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth and that the circumstance of birth of the 1st Respondent in the case, Reginald Okoli cannot be a bar to his legal and properly proven rights.

[58] The Constitution of the Federal Republic of Nigeria (Alteration) Bill, 2014, sponsored by Hon. Olarotimi Mikail Makinde, Nigerian National Assembly, Abuja -FCT.

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one of the basic provisions of the law considered under this work is sought to be amended by the legislature.

This is an unconscious attempt to safeguard the property rights of women in that, on the face of it, the Bill merely seeks to grant foreigners who have come into Nigeria lawfully, the right to own and acquire land in Nigeria, irrespective of their status. Our reason for this submission is basically from the substitution of the phrase "every citizen of Nigeria" under Section 43 of CFRN sought to be amended for "everyone lawfully within the territory of Nigeria" in the amendment Bill. This Bill, which seems to empower foreigners to apply for land with the appropriate authorities in Nigeria also seems to accommodate women who might have been disinherited under a repugnant custom, to own immovable property in an explicit way. It is further observed that the existing provision of Section 43 is not so different in substance from the wording of the 2014 amendment bill. It is merely an adaptation of the elaborate drafting style as opposed to the thrifty approach adopted by the amendment bill 2014 which tries to elaborate or adumbrate the existing provision of Section 43. The additional words contained in the amendment bill can be imputed into the existing provision because the bill and the existing provision have the same scope and import. The fundamental word that needs to be added to the provision is the word "inheritance," but this word is not factored into the new bill to empower women in defending their right to inherit immovable properties from her deceased male heirs.

Although the proposed amendment might be favourable to women's right property, it does not mitigate the fact that there is no change in their status at all unless the word inheritance is included, or an interpretation is included saying, the word acquire includes inheritance. Where this is done, the controversy surrounding whether or not a woman can acquire land by

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inheritance under native law and customs, despite the existence of the provision of Section 351 of the Constitution might eventually be laid to rest.

It is worthy of note that Bills are not laws. Nevertheless, the giant stride made by the National Assembly and some individual members in the National Assembly who sponsored bills to ameliorate the suffering of women with regard to administration of land is timely and worthy of academic research and discussion, even though there is no hundred percent assurance that they will become laws. It is on this ground that this work is anchored.

There is the proposed Bill to be known as the Repugnant Widowhood Practices (Prohibition) Bill, 2014.[59] Both Bills shall be analyzed in our discussion of their effect on the Southern Kaduna customs in relation to widows' real property rights that follow.

5.4.3 Repugnant Widowhood Practices (Prohibition) Bill, 2014.[60]

Another interesting move of the Nigerian National Assembly to safeguard the position of the womenfolk as far as discriminatory property rights are concerned is another bill before the National Assembly tagged the REPUGNANT WIDOWHOOD PRACTICES (PROHIBITION) BILL, 2014.[61]This Bill of four sections seeks to prohibit and criminalize all repugnant and dehumanizing widowhood practices in Nigeria and prescribes the punishment for its contravention.[62]

The Bill provides that;

> *"as from the day of its commencement, any person who subjects any widow to any, dehumanizing, offensive and repugnant treatment[63]; or who, acting alone or by concerted efforts of other*

[59]A Bill for an Act to Prohibit Repugnant and Dehumanising Widowhood Practices in Nigeria and for Related Matters, 2014, *Sponsored by Hon. Charles* C. *Odedo,* Nigerian National Assembly, Abuja –FCT.
[60]A Bill for an Act to Prohibit Repugnant and Dehumanising Widowhood Practices in Nigeria and for Related Matters, 2014, *Sponsored by Hon. Charles* C. *Odedo,* Nigerian National Assembly, Abuja –FCT.
[61]A Bill for an Act to Prohibit Repugnant and Dehumanising Widowhood Practices in Nigeria and for Related Matters, 2014, *Sponsored by Hon. Charles* C. *Odedo,* Nigerian National Assembly, Abuja –FCT.
[62] Explanatory Memorandum to the Repugnant widowhood Practices Bill, 2014
[63] Section 1 (1) (a) of the Repugnant widowhood Practices Bill, 2014

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> *people makes false or malicious accusations against any widow[64]; or forcefully disinherits a widow of any inheritance from her deceased husband knowing that she has children for the deceased and would need the said inheritance to maintain herself and her children;[65]or who forcefully ejects a widow from her home knowing she and her children would be stranded and homeless[66]; or aids or abets another in the commission of all or any of the above acts[67];or conspires with any person(s) to carry out all or any of the acts mentioned in this subsection; shall be guilty of an offence under this Bill."[68]*

These provisions are commendable and praise worthy in the sense that they have secured certain rights (including real property rights) of a widow who might, where subjected to certain customary practices, be disentitled to inherit from her late husband, among other repugnant practices.

However, the provision of Section 1 (1) (c) and (d) of the Repugnant Widowhood Practices Bill, 2014 is worthy of re-consideration as it seems to assert a condition for its operation. Section 1 (1) (c) of the Bill provides as follows:

> *"Section 1 (1) As from the commencement of this Bill, any person:*
> *(a)…*
> *(b)…*
> *(c) Who forcefully disinherits a widow of any inheritance from her deceased husband knowing that she has children for the deceased and would need the said inheritance to maintain herself and her children; … shall be guilty of an offence under this Bill."*

The phrases "*knowing that she has children for the deceased*" and *"would need the said inheritance to maintain herself and her children"* are unfavourable to the spirit of the amendment sought in this Bill. This is because it brings in ingredients for the commission of the offence which might encourage continuous violation of widows' rights.

[64] Section 1 (1) (b) ibid
[65] Section 1 (1) (c) ibid
[66] Section 1 (1) (d) ibid
[67] Section 1 (1) (e) ibid
[68] Section 1 (1) (f) ibid

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In the law of crimes a person cannot usually be found guilty of a criminal offence unless two elements are present; i.e. *actus reus*[69]; and *mens rea*[70]. Both these terms actually refer to more than just moral guilt, and each has a very specific meaning, which varies according to the crime. But, the important thing to remember is that, to be guilty of an offence, an accused must not only have behaved in a particular way, but must also have had a particular mental attitude to that behaviour.[71]

Therefore, a person may not be held liable for committing the offences listed under the Bill if such person can merely show that he or she is not aware that the widow of the deceased has no child for the deceased. It seems to be a defence to the crime where the accused can show that he is aware that the widow has no child at all for the deceased and therefore not entitled to the said inheritance save to maintain herself. This limits the seriousness that this Bill will command, if eventually passed into law. There should be no condition(s) whatsoever attached to inheritance of a deceased husband by his widowed wife because of the vulnerability of these classes of women when the undesirable happens.

Also, the use of the word *"forcefully"* also presupposes that where such disinheritance of a widow was not done by force, the accused will not be criminally liable. This is tantamount to throwing the baby with the bath water in the sense that widows might still be exposed, under paragraph (c) to those repugnant practices sought to be addressed in this Bill.

Therefore, a proposed redraft of the paragraph (c) is attempted below;

> *(c) Who forcefully or otherwise disinherits a widow of any inheritance from her deceased husband; … ……shall be guilty of an offence under this Bill.*

[69]Latin maxim for "guilty act"
[70]Latin maxim for "guilty mind" i.e. intention to commit the crime
[71] Elliot Catherine and Quinn Frances, Criminal Law, 9th Ed., Pearson/Longman, 2006, p.14

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The redraft above makes it unconditional for a widow to inherit her deceased husband and protects the widow under any and all customs in Nigeria that may still be engaging in these illegal customs.

Similarly, Section 1 (1) (d) of the Bill provides as follows:

> *Section 1 (1) As from the commencement of this Bill, any person:*
> *(a)…*
> *(b)…*
> *(c)…*
> *(d) or who forcefully ejects a widow from her husband's home*[72]*;*
> *… shall be guilty of an offence under this Bill.*

This provision is also offensive to the interest of widows because the word *"forcefully*" and the phrase *"knowing she and her children would be stranded and homeless"* are not helpful to the protection of widows sought by this Bill as we have stated earlier. This is because it introduces a *mens rea* (of knowledge) of the fact that the woman and her children would be stranded and homeless when ejected from the house, such that it becomes a defence to show that the accused person is aware that the woman has other houses and neither she nor her children would be stranded and homeless after being ejected from the house of the deceased husband.

The Bill went further, in prohibiting inhuman treatment of a widow and stipulate punishment for the offence of acts constituting repugnant widowhood practices; Section 2 thereof, provides that:

> *Any person(s) who commits an offence under this Bill shall be liable on conviction to a term of imprisonment of not less than 10 years, with no option of fine and the Judge may make any such order as he deems fit.*

The Bill therefore stipulates a minimum of 10 years imprisonment without option of fine, which limits the discretion of the court stated by virtue of that provision only to 10 years and above for punishment. This however is not a good provision as it is too excessive and gives the

[72] Section 1 (1) (d) of the Repugnant widowhood Practices Bill, 2014

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judge too much power to ascribe punishment for the accused person particularly as it fixes no maximum punishment and added *"…and the Judge may make any such order as he deems fit".*

In addition, the Bill states that the courts of competent jurisdiction in this regard shall be the High Courts of a State and the Federal Capital Territory. These courts shall have jurisdiction to try offences committed under the Bill.[73]This is improper as victims of repugnant widowhood practices as it were are in most cases women living in the rural areas where customary courts are prevalent. It is highly recommended that the jurisdiction of the court in this matter should have been vested in customary court and magistrate courts in Nigeria.

Another fundamental issue to note is that the Bill seeks to criminalize all those acts constituting offences under the bill and the criminal conduct sought to be protected by this bill does not pertain to violation of a right that is contained in the Nigerian constitution[74].Therefore, if a person who violates this law is found guilty and punished, what follows as the benefit derived by the widow in the circumstance? This is because the guilt is nota ground to enforce the act as a right as there is no specific provision under the bill providing for such and therefore this bill will not have much effect pursuant to the foregoing.

The proposed bill favors the surviving spouse as the administrator of the estate. It criminalizes property grabbing, eviction from the family home, the taking of children, and widow inheritance—that is the "inheritance" of the widow herself by male relatives.

[73] Section 3 of the Repugnant widowhood Practices Bill, 2014

[74] This is because Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) on the right to property does not include inheritance as a means of acquisition of land

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CHAPTER SIX:

SUMMARY AND CONCLUSION

6.1 Summary

The nature of customary practices amongst the Southern Kaduna tribes under study, in relation to how the position of a woman is regarded when it comes to the acquisition and possession of real property rights in the various areas, has been examined. It is accordingly observed that most customary practices view female ownership of real property with contempt and have, as much as possible, made same forbidden, at times in the most subtle[1] form. This seemingly unfair practice exists by virtue of intestacy, for under native law and custom, the devolution of property follows the blood. Consequently, a wife or widow, not being of the blood, is usually seen as having no claim to any share.[2]An exception to this practice does exist, that when a widow chooses to remain in her husband's house and in his name, she can do so even if she has no children.[3]

Despite statutory provisions and judicial authorities upholding women's right, the reality remains that women are still denied equal opportunity to inherit property with men in the community in Southern Kaduna areas, where Customary Practices of the people of Southern Kaduna are still in force. With a view to achieve the aims and objectives of this thesis which is to examine the challenges associated with the rights of women in relation to property (delimited to Real property rights in this work), this dissertation considered the historical background of the Southern Kaduna tribes under study, viz the Jaba, Bajju, Atyap and Gbagyi Tribes. The understanding of their various historical standings as discussed first in this thesis is with a view to understand the beliefs and aspirations of the people in their various areas so as to be able to

[1] This implies mild and seemingly friendly provisions of the custom that pretends to give a woman the right to own immovable property, whereas, in the real sense of it, it is meant for her son, whether unborn or otherwise, such that where she has no son or decides to re-marry outside the deceased husband's family, she is dispossessed of the land.
[2]*Shogunro Davis v. Shogunro* (1929) 9 NLR at 79/80;
[3] This position is in tandem with that discussed in the case of *Nezianya v. Okagbue* (1963) 1 All NLR p. 52.

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juxtapose these positions with what obtains under the extant Human Right Laws in force in Nigeria. This can only be achieved by a discussion of the basic Property rights regulations in Nigeria, including those regulations of International coverage for which Nigeria is a Party.

Under the legal framework, the 1999 Nigerian Constitution, the Nigerian Evidence Act of 2011, and the Land Use Act were considered. Also considered, are International regulations like the United Nations Convention on the Elimination of all kinds of Discrimination against Women of 1979, the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW Convention) the African Charter on Human and Peoples Right, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which currently enjoys the patronage of being the most detailed legal framework globally to protect and secure the rights of women n extensive and expansive terms. The other legislation discussed under the Chapter includes the Wills Act, which regulates the making of a will in Nigeria.

The Nature of women's right to Property, under Common law and Customary Law are considered and discussed, including the Modes of Acquisition of property under Customary law, such as deforestation, Inheritance, gift, Acquisition by Sale and other means, and followed these discussions with a consideration of the Nature and Scope of Women's Right to Property in Nigeria and the interface between the Women's Right to Property under Customary Law and Common Law.

The Paternal Real property rights of Women and Inheritance Rights as well as challenges associated with property rights of women where they are widows are discussed under this Chapter and followed by the Recent trends on the Property rights of women in Nigeria where new Regulations yet to be passed into law are considered and recommendations accordingly proposed under the Chapter.

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6.2 Findings

In view of the foregoing discussion, it is however observed that;

1. It was observed that the assertion that women do not own land is not true, they actually own land, contrary to the position of Western Orientalists. The assertion of these western orientalists is wrong and unfounded, in the sense that people who make the assertion are confusing ownership and inheritance, because women under Southern Kaduna Customs do not inherit land like their male counterparts. They own land but they do not inherit land from their families, neither do widows inherit from their husband's house.
2. There is inadequate legislation on ground to reduce or limit the extent of violation of property rights of women or widows in Nigeria, particularly in the rural communities. Women are usually denied the opportunity of ownership and possession of their deceased husband's land and or landed property, until the recent Bill of the Nigerian National Assembly for an Act to Prohibit Repugnant and Dehumanizing Widowhood Practices in Nigeria and for Related Matters, which has its own shortcomings addressed in this paper.
3. There is an extremely high rate of illiteracy among the people of southern Kaduna, leading to an overblown situation of lack of awareness of existing laws that protect their right to acquire and in fact inherit land either from their deceased parents or their deceased husbands. This trait is common to all the southern Kaduna tribes under study, regard being had to their customary laws and norms, as they clearly show no intent to equate their womenfolk with the same right of property ownership accorded to their men folks, especially title through inheritance. However, on the other hand, Statutory provisions especially the Maputo Protocol specifically gives African Women the equal rights, privileges and opportunities bestowed on the male folk, in respect of landed property ownership and acquisition

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4. This study also discovered that, though there has been some notable judicial pronouncements in superior court of records, over customs that are similar to the customs of the Southern Kaduna people and which show that any Southern Kaduna custom that is repugnant to natural justice, equity and good conscience will be declared null and void and inconsistent with the Constitution of the Federal Republic of Nigeria, 1999 (as amended), as has been done by the courts in said similar cases.
5. It was realised in the course of this research that, there are extremely inadequate enforcement mechanisms in place to protect the property right of women of Southern Kaduna tribes. It was also realised that, it is extremely difficult for the southern Kaduna women who live in the core southern Kaduna native communities to take advantage of the provision of Section 46 of the Nigerian Constitution (as amended) as courts that have jurisdiction to hear and determine fundamental right enforcement cases are High Courts and Federal High Court, and not Customary Courts or Area Courts that are closer to them at the grassroots; and this seriously undermines the ability of victims to seek adequate and proper legal protection when their fundamental human rights are being violated and denied.
6. There are numerous challenges women of Southern Kaduna tribes encounter in relation to their rights to acquire property. Such challenges can be categorized into Illiteracy, Lack of will power, strong traditional institutions[4], inadequate government Interest and Protection, e.t.c.

[4] Generally, rural communities in Nigeria have an established traditional institution that guides their cultural and customary model; Southern Kaduna is definitely not left out. These traditional institutional establishments are much feared and respected by the community, more than the regular and strictly controlled government system in such a way that people of these areas fear the supposed repercussions for not obeying the dictates of the traditional institution.

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6.3 Recommendations

Having regard to the aforesaid observation, it is hereby recommended as follows;

1. Adequate legislations and other executive directives of government should be put in place to enhance and facilitate the realization of the possibilities and opportunities that exists for women to acquire and own immovable properties in Southern Kaduna
2. Inclusion of a human right subject in curriculum of all primary and secondary schools in Southern Kaduna specifically and in general in all communities, with a view to teach students the basics of fundamental rights and how to seek redress in the event that their fundamental right has been, is being or likely to be breached
3. Enactment of legislations empowering lower courts such as customary courts and Area courts to hear cases involving the violation of fundamental rights of people in rural communities like those of Southern Kaduna under consideration being courts that are closer to the grassroots than superior courts.
4. It is recommended also that, the word "inheritance" be included in the provision of section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), so as to curb the unfriendly customary practices in relation to ownership of land by women not only in Southern Kaduna, but under other tribes in Nigeria. Therefore, Section 46 of the Constitution of the Federal Republic of Nigeria , 1999 (as amended) be amended thus:

   "Everyone shall have the right to <u>acquire, own and inherit</u> immovable property in Nigeria…"
5. It is highly recommended that, the jurisdiction of the court in matters relating to the repugnant widowhood practices Bill should have been vested in customary or magistrate

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courts in Nigeria, being courts that are closer to the category of persons the Bill seeks to protect.

6. Adequate legislative provisions should be made to address the land and landed property aspirations of women in rural communities vis-à-vis the customary practices obtainable in these communities. In other words, other laws should be enacted with penal provisions to criminalize and punish persons who found guilty of violating the fundamental rights of a woman to own land which she must have earned, particularly widows who are first line victims of these barbaric treatments to deter further violation from others.
7. Adequate enlightenment and education of the people, and particularly the women of Southern Kaduna on not only their property rights, but also on other rights at the grassroots is of great importance, with a view to equip them with the relevant protection they will require against any form of discrimination, whether the customs gives a nod to it or not and to satisfy them that they can also seek redress from the common law courts despite the fact that the right against which redress is sought is one of customary nature. This will, in effect, take away the phobia associated with going to court to enforce their fundamental rights as it instills confidence in them to step out and fight for their rights at any level.
8. Parents should refrain from sex-preference of children in the running of their family or for whatever reason as it results in the impression wrongly held by most parents to see their girl children as a burden on them, or seeing them as a member of another family which will marry her in the future. This therefore implies that the girl child should not be denied the opportunity to own and possess property, including immovable property solely on ground that she is a female while in her father's house or even afterwards.

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9. New Laws made or proposed to be made for the protection of the rights of women are to be must as a matter of fact be put together to protect the vulnerable class of citizens in Nigeria, particularly women and children. Therefore such laws proposed to be made like the Repugnant Widowhood Practices Bill, 2014 which seeks to protect the interest of women, particularly widows from many unwholesome practices of customs against widows after the demise of their husbands must have been tested with a consideration of several customs in all the regions of Nigeria, before they are passed into Law. Opinions should be sought from the affected persons or persons targeted as being the Beneficiaries of these laws before they are passed into law. In other words, as stated earlier, the Repugnant Widowhood Practices Bill has an offensive provision under Section 1 (1) (c) which must be corrected before it is passed into law, as it provides, in an attempt to protect the interest of widows that;

> *"As from the commencement of this Bill, any person: (a)…(b)…(c) Who forcefully or otherwise disinherits a widow of any inheritance from her deceased husband whether or not she would need the said inheritance to maintain herself and her children; … shall be guilty of an offence under this Bill."*

This redraft takes away the restrictions that will raise doubt on the *mens rea* or *actus reus* for the proof of this offence and it is sincerely hoped that this observation would be considered before the Bill is passed into Law.

6.4 Conclusion

This dissertation has considered the property rights of women in Southern Kaduna, (with particular reference to the Jaba, Bajju, Atyap and the Gbagyi tribes). The tribes have their various traditional beliefs which they have observed over time, but have turned out to be discriminatory against women and a violation of the fundamental rights of women in these areas as discussed under this dissertation. Be that as it may, Islam and Christianity are overtaking these

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customs and law also permits and guarantees the freedom of religion, which makes the people of these areas under study bound by the dictates of the religion in most cases.

The property rights of women are only gaining more attention lately after being wrapped up with various challenges of lack of adequate protection in the past; and the laws are being put in place to protect and enhance the protection of these rights. The adaptation of the methodology of this research work and the discussions is done with a view to give women a pillar to lean on when arguing their cases against a repugnant custom depriving them of their right to own immovable properties. Several sources have indeed discussed the right of women, but none has an elaborate discussion of the property rights of women, with particular reference to the women of Southern Kaduna.

If all facts are put in place and recommendations put into action, we have no doubt that the Property rights of women in Southern Kaduna will be adequately protected against any unwarranted a violation in the name of observance of certain customs and traditions which, with due respect, have all outlived their usefulness.

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QUESTIONNAIRE

Section One: Bio – Data of Respondent

(Tick as appropriate)

1. Sex: Male ( ) Female ( )
2. Marital Status: Married ( ) Single ( )
3. State of Origin: _____
4. Local Government Area:_____
5. Ethnicity:_____

SECTION TWO

6. Are you conversant with your customary practices?
   (a) Yes ( ) (b) No ( ) (c) Don't know ( )
7. Does your customary practice recognize the rights of women to own moveable property?
   (a) Yes ( ) (b) No ( ) (c) Don't know ( )
8. Does your customary practice recognize the rights of women to own immovable property?
   (a) Yes ( ) (b) No ( ) (c) Don't know ( )
9. Does your customary practice allow woman to inherit immovable property from their father's house?
   (a) Yes ( ) (b) No ( ) (c) Don't know ( )
10. Does your customary practice allow women to inherit immovable property from their husband's house?
    (a) Yes ( ) (b) No ( ) (c) Don't know ( )
11. Women should be accorded equal rights to inheritance with men in her father's house
    (a) I agree ( ) (b) I disagree ( ) (c) Undecided ( )
12. Women should be accorded equal rights to inheritance with men in her husband's house
    (a) I agree ( ) (b) I disagree ( ) (c) Undecided ( )

Thank You