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The Regulation of Inheritance Rules and Practices in Nigeria: Role of Shari'ah and International Human Rights Law

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Abstract

This work is a doctrinal investigation of inheritance rules and practices in Nigeria with a view to developing a coherent and sustainable legal regime for inheritance. With the perception that a number of the rules and customs of inheritance in Nigeria are enforced in a haphazard manner and a disregard for the rights of women and children, it argues for a development of some rules to ensure just and equitable regulation of inheritance in Nigeria. It also argues that the current author's assumption that the process of developing this legal regime to strengthen the position of existing customary/religious rules on the subject, two bodies of law and International Human Rights Law- can be employed.

Keywords: Inheritance, Human Rights, Shari'ah, Law, Regulation.

Introduction

This work is an account of a doctrinal investigation of inheritance and regulation in Nigeria. It is undertaken to test the current author's assumption that the process of developing this legal regime to strengthen the position of existing customary/religious rules on the subject, two bodies of law and International Human Rights Law- can be employed. With the perception that a number of the rules and customs of inheritance in Nigeria are enforced in a haphazard manner and a disregard for the rights of women and children, it argues for a development of some rules to ensure just and equitable regulation of inheritance in Nigeria. It also argues that the current author's assumption that the process of developing this legal regime to strengthen the position of existing customary/religious rules on the subject, two bodies of law and International Human Rights Law- can be employed. With the perception that a number of the rules and customs of inheritance in Nigeria are enforced in a haphazard manner and a disregard for the rights of women and children, it argues for a development of some rules to ensure just and equitable regulation of inheritance in Nigeria. It also argues that the current author's assumption that the process of developing this legal regime to strengthen the position of existing customary/religious rules on the subject, two bodies of law and International Human Rights Law- can be employed.

make orders, if it deems necessary, for a lump sum payment of periodical payments to the applicant out of the net estate of the decedent.

On the contrary, the supportive system to the regime of testamentary freedom in Nigeria hitherto seems only to provide for circumstances of intestacy and not when dependent relatives are unfairly disinherited in a testamentary document. For example, intestate succession in the states of the former Western region of Nigeria was governed by the Administration of Estates Law, Cap. 1, Laws of the Western Region of Nigeria, 1959.

Alternatively, most industrial societies such as England possess state-sponsored social safety nets, for example social security and pension schemes, to cater for poor, indigent and destitute persons (Owen, 1996, p.24). This category of persons in the current author's opinion, may include those who suffer as a result of either an unfavourable testamentary disposition or discriminate inheritance regime. Meanwhile, the system of social safety nets and welfare has been and continues to be unsatisfactory in Nigeria (Ibid). It is not the intention to argue that restricting the testamentary capacity of individuals with dependent relatives provides a solution to improving the Nigerian social security system. However, the availability of private resources from the estate of a deceased bread winner is a cater for basic socio-economic requirements from the perspective of the surviving dependent relatives, at the very least, may make a difference between life and death.

Taking account of all the above, the application of the Will's Act 1837 was later unsurprisingly repeated in most regions of Nigeria by indigenous legislation. For example, in the then Western and Mid-Western States of Nigeria (namely Ogun, Ondo and the old Bendel States), the applicable legislation was the Wills Law No. 28, 1958 (hereinafter Wills Law, 1958). A similar legislation for some states in the Eastern region was the Succession Law Edict, 1987 applicable in Anambra and Enugu States. These laws were for the most part merely regional replicas of the provisions contained in the colonial law of 1837 which applied throughout the country. One important departure from the parent law, however, was an important qualification in relation to the application of these laws. By way of illustration, section 3(1) of the Wills Law of all the Western states provides –

Subject to any Customary Law relating thereto, it shall be lawful for every person to devise, bequeath or dispose of, by his (sic) will executed in a manner hereinafter required, all real and all personal estate which he shall be entitled to, either in Law or in equity, at the time of his death and which if not so devised, bequeathed and disposed of would devolve upon the heir at law of him, or if he became entitled by descent, of his ancestor, or upon his executor or administrator. (Emphasis added).

This provision, which limits testamentary power by a relevant customary law, appears to reflect the acknowledgement by the lawmakers of one fact: that in the

property sought to be devised. Therefore, in the opinion of the court, if the property is such that a decedent's customary law makes its disposition in any event impossible then its devise by will be null and void. The current author is of the opinion that the latter construction of the section in *Idelhen's* case merely offers a difference in semantic terms without any real distinction. For if all property held by a decedent were held in accordance to customary law, the principle in *Idelhen's* case will apply in the same way as that in *Oke's* case such that the decedent is effectively deprived of testamentary power. That a confusing situation has been created becomes more apparent in decisions of some lower courts in subsequent cases with similar facts. For example, in *Lawal-Osula V Lawal-Osula* cited above, the Court of Appeal stated in categorical terms that it was applying the principle in *Idelhen's* case but still went ahead to hold that – "all the dispositions of the testator's property made in the aforesaid will are null and void. The property aforesaid devolved on the law on the first appellant."

Perhaps the above controversy is the consequence of legislative oversight under section 3(1), one may admit that it is unclear if the lawmakers desired an inheritance regime which strengthens testamentary capacity or if the intention was to water down testamentary power in favour of customary law. However, that the latter may have been the case is evident in the categorical and unequivocal textual provisions currently in force within most Nigerian states' law on testate and intestate succession. The relevant sections in the Laws of Kwara State provide illustrative examples. As far as testate succession is concerned in that State, the law on the point in Kwara State Wills Law, Cap. K58, Laws of Kwara State, 2006. By virtue of the provisions in section 4 of this law entitled 'Power to dispose property by will' –

(1) It shall be lawful for any person who is of sound mind and legal age to dispose of his or her property by will –

(c) It shall be lawful for every person to bequeath or dispose of, by his will executed in accordance with the provisions of the Law, all property to which he is entitled, either in law or in equity at the time of his death;

Provided that the provisions of the Trust shall not be affected by the death of any person.

- (a) provided that the provisions of the Law shall not apply to any property which the testator had no power to dispose of by will or otherwise under customary law to which he was subject; or
- (b) to the will of a person who immediately before his death was subject to Islamic law."

On the issue of intestate succession, the relevant law is Kwara state Administration of Estates Law, Cap. A1, Laws of Kwara State, 2006. Sections 1 and 2 of the law delineate the scope of its application and provides that-

(1) This Law shall not apply to-

- (1) This Law shall not apply—
(a) to deaths occurring before its commencement unless otherwise provided; or
(b) to the estates of deceased persons, the administration of which is governed by Islamic Law.

(2) The Provisions of this law relating to the administration of the estate of a person who died intestate or the undisposed part of the estate of a testator shall apply only to persons who contract a valid monogamous marriage and are survived by a spouse or issue of such marriage;

Provided that any property the succession of which cannot according to customary law be affected by testamentary disposition shall be disposed in accordance with such customary law anything herein to the contrary notwithstanding.

Although the quoted provisions appear to settle the issue beyond doubt, the court's decision in *Attorney General v. Ibrahim* is a landmark decision in the history of the Kwarar state Wills Law received judicial attention in Nigeria. The facts of this case were that the decedent, a man who had been married to a Christian maintained a polygamous marriage, was survived by three wives and children. He allegedly made a will in which he requested that his "estate be distributed in accordance with the English Law". Interestingly, only the third wife had information about the existence of the will. The trial court found that the purported disposition by the decedent contravened the provisions of the Kwarar state Wills Law to which he was subjected. The will was declared null and void.

Where, as in the cited judicial authority, the statutory limitation in customary or religious law operates to deprive a decedent from responsibilities to close relatives, there appears to be no need to further limitation. However, it is on record (as discussed in the next section) that many or religious rules of inheritance or their application result in disinheritance. It seems that while it may be important that some customary/religious inheritance are preserved by limiting testamentary power, the law must also guard against the application of those rules. This line of discussion is pursued in more detail in section VI. Taking account of the constant re-emergence of religious laws or rules governing inheritance in Nigeria both as well as in present times so far in this work, it may be useful to give a brief summary of the most popular. Although the discussion in the next section is descriptive of the major rules and practices, it also examines documented instances of the rules in relevant literature.

Examples of Some Religious and Customary Laws/Rules of Inheritance

It is important to again emphasize that this section is not an empirical account of all forms of customary and religious inheritance rules or in times past operative in Nigeria. What follows is an outline of some of the popular customary and religious rules of inheritance that have been

received considerable mention and analysis in relevant literature. For clarity of presentation, the discussion in this section will come under the following headings: (a) Customary laws of Inheritance and (b) Religion-inspired rules of Inheritance

Customary Laws/Rules of Inheritance

1. The *Igigbe* rule (Sagay, 1995, p.173-182) amongst the Benin tribe (Okeke, 2011). According to the *Igigbe* custom, which appears to partly encapsulate the primogeniture rule, the oldest surviving male child of the decedent inherits the family house and in some cases the entire property to the exclusion of all other children. Clearly, the widow and daughter(s) of the decedent as well as other minor male children have no right of inheritance by the operation of this rule. Variants of this custom have also been documented in the inheritance practices of the Ibibio and Urhobo tribes (Sagay, 1998, pp.109-121). As Ogbobine (1974, p.39) has written in defence of the rule-

The custom which allows the eldest son to take the deceased's main house to the total exclusion of other children cannot be regarded as unfair and unjust. If the eldest surviving son is to play his traditional position in the family as the guardian of his younger brothers and sisters, and the custodian of the family shrines which are of great significance in other aspect of the Bini Custom, then the social structures of the community must be regularised in order to prevent the imposition of social and family duties on the eldest son without the existence of some proprietary rights with which to meet such obligations.

The argument seemingly subscribes to the logic that the heir apparent under the *Igigbe* custom succeeds to the bulk of an estate ostensibly as a trustee on behalf of all the other surviving heirs, especially as he becomes responsible for their alimentary support and upkeep. It is not clear, however, if there are customary checks and balances to the whole process to cater for situations where the eldest son turns out to be unscrupulous and greedy. The success of the system appears, therefore, to be hinged entirely on the good conscience of the eldest son to act in all situations as expected and places at his mercy all other surviving and entitled heirs.

The persuasive objection to the operation of the *Igigbe* rule by a former justice of the Nigerian Court of Appeal, Kolawole JCA, in *Agidighi v Agidighi* presents a realistic view of the rule, as he poses the following questions-

If the eldest son attempted to exterminate his father in order to succeed to the *Igigbe* ... [or] If the eldest surviving son is an imbecile, an idiot, a mentally incompetent son who has to be looked after, what does the Court do? What is the position when the eldest surviving son has been imprisoned to a long term of imprisonment for crime against his father? Would such eldest son be able to undertake and discharge the responsibilities of the status of the head of the family?

In view of the issues and questions raised above to an uncritical application of the rule, one may therefore argue that the rule as it is, is discriminatory and amounts to multiple violations of the rights of other surviving heirs apart from the eldest son.

The rule of succession to status, responsibilities and properties of a deceased person is a 'trust' for the oldest male child who at the time of death is still a minor. This is a fairly common practice amongst most Yoruba (Coker, 1966, p.39). According to this practice (Coker, 1966, p.39), a deceased person's property includes his personal chattels and surviving wife or children. Customarily, the practice dictates that a male decedent's eldest surviving son inherits the property and responsibilities including wives with the proviso that a male decedent's eldest son is too young to succeed his father as stated, the oldest surviving son succeeds to the entire estate allegedly in trust for the oldest son until he attains majority. In critical terms, however, and as popular practice dictates-

The distinction between what a brother inherits as his own right and as trustee for his nephew is often obscure and ... [o]ne frequently hears of the wicked uncle who used his brother's property for the benefit of himself and his own children, ignoring his nephews who perhaps live in their mother's compound. The legal right of these children to take action in the courts for a restoration of the property is balanced by the social duty to keep family quarrels out of the courts (Coker, 1966, p.39)

Unarguably, even where an inheriting uncle in deserving circumstances scrupulously, the practice still clearly favours gender discrimination. For the surviving wife (or wives) has no right of inheritance as such but is herself to be 'inherited'. Similarly, the female children of a male decedent appear to account for all in the composition of the inheriting group.

At this juncture, it needs to be mentioned that levirate marriages (practice of widow inheritance is a custom not unknown to some of the other tribes as well (Gwako, 1998). In the sense of one such African tribe (Coker, 1966, p.173), it has been argued by some anthropologists that the custom of inheritance is not always prejudicial to the interests of widows. This is for that, according to such views, some widows themselves freely consent to such marriages for reasons of social and economic benefit (Coker, 1966, p.180-5). This contention, however, ignores the fact that *ab initio*, the fear or impending social and financial insecurity due to no recognition of inheritance deliberates/negates the issue of free consent on the part of inherited widows. It may amount to a choice made for reasons of survival and necessity. While it is true that a symbiotic and free marital union between a widow and her late husband is indeed a possibility, some empirical studies have shown that such cases are few and far between to be regarded as the norm.

Struensee, 2004, p.1-41; Fenrich and Higgins, 2001, p.279). At any rate, the primary concern is not that widows in such situations may not remarry within the same family as their deceased husband's or be inherited for their benefit. The argument is that such unions should not be forced either directly or indirectly. For as Eweluka (2003, p.438) has rightly noted- '[a]n inverse relationship exists between the degree of a widow's economic independence and her willingness to accept a levirate marriage'. There will thus be a stronger presumption in favour of free consent to levirate unions in circumstances where widows as well as their offspring regardless of sex are in their own rights recognised as rightful heirs to inheritable property with their free and unencumbered use of inherited property fully ensured.

3. Another indication from relevant sources (Ejidiye, 1998) is that in Igbo culture (Afigbo, 1975), women generally as widows or daughters have no right of inheritance. Accordingly, it has been reported that (Ejidiye, 1998 p.94) -

It was inconceivable that a first female child would inherit her father's property but this right was taken for granted by first male children. Igbo men felt incomplete and under threat of losing their names until they begat (sic) a son. Without a son, they believed, one would not leave any mark for posterity. By [this] token . . . the Igbo system of land allocation, inheritance and property worked against the female members of the society.

It has, however, been argued that amongst some western Igbo tribes, a woman's right to inherit may be recognised under the custom of *Idegbe* inheritance (Obi, 1962). The term apparently connotes a spinster who remains unmarried and continues to live with her native family for the purpose of bearing male heirs to inherit her father's property. As Obi (1962, p.3) rightly observed, it is quite misleading to say that in the sense of *Idegbe*, a woman has inheritance rights. This is because the clear implication of the custom is that in such situation, the heiress merely acts as custodian of inherited property until she bears sons to take over.

A variant of this custom appears to be the Nnewi (a city in the South-eastern Nigerian state of Anambra) custom of *Nrachi*, under which widows and daughters also have no right of inheritance (Bahdi, 2002, pp.259-260; *Mojekwu & others v Ejikeme & others*). However, by the ceremony of *Nrachi*, a man with daughters and no sons becomes entitled to take away the right and freedom to marry of any of his daughters for whom the ceremonial rites had been performed. Such a daughter continues to live in her father's house to bear him sons by having non-marital relationships and 'symbolically adopts the status of a son and stands to inherit her father's estate' (Bahdi, 2002, pp.259). At her death, her sons or grandsons (and daughters it would seem) comprise the inheriting group. In the event of her dying with no male surviving heir directly from her or through a female progeny, the custom of *Uli-Ekpe* (*Mojekwu & others v Ejikeme & others*) becomes applicable. This latter custom provides that where a man has no surviving male heir either directly or subsequently from a 'symbolic heiress', his brother or the brother's sons, in turn, inherit the estate.

Arguably, and as Ejidiye (1988, p.94) has also contended, the Igbo male-female dichotomy in inheritance practices as discussed violates a number of human rights provisions in IHRL, notably the non-discrimination principle enshrined in Articles 2, 3 and 26 of the ICCPR, 1966.

Religion-Inspired Laws/Rules of Inheritance

It is possible to argue that the most popular religion-inspired system of inheritance presently applicable in Nigeria is the Islamic law of inheritance (Williams, 2004, p.246; Pierce, 2003, pp.463-486). This system has been referred to as 'extensive rules relating to succession' (Amoloye-Adebayo, 2004, p.438). Within which women constitute part of the inheriting group in the estate of a male relative, contrary to what obtains under the various customary systems of inheritance in Nigeria. The Islamic law of inheritance is based on the application of the Islamic law of inheritance generally and in the Nigerian context, it has been without some criticisms (Carroll, 2001; Pierce, 2003). The first objection regarding what is termed different entitlement for female heirs in relation to male heirs of the same class. That is to say, the application of the inheritance rules contained in the Qur'anic verse Q4:11 according to which sons inherit a share of their female counterparts in the estate of a deceased parent. Another objection against the application of the Islamic law of inheritance specifically in the Nigerian context has to do with the possibility of prejudicial modifications of the provisions of the express provisions of the Islamic inheritance provisions as regards the possibility of its recurrence in present times may be improbable. It is reported that in 1923 the Emir of Kano (Pierce 2003, p.463) published a decree that in essence excluded women from inheriting houses and farms (Pierce 2003, p.464). His reasons were reportedly that 'women inheritors were prostitutes' (Pierce 2003, p.43). The expression, to the current author, appears to be a derogatory personal judgement rather than an interpretation of the Islamic law of inheritance as it relates to women (Amoloye-Adebayo, 2012). Interest in inheritance is reported to have been reversed in 1954 by his successor with the effect that 'women's re-enfranchisement would ameliorate the poverty of destitute women' (Pierce, 2003, p.464). As earlier said, the above has been recounted to demonstrate that it was possible to subject the application of clear provisions of Islamic law on inheritance to varying destinies from one political ruler to the next.

Regarding the first objection, as some Islamic sources indicate (Pierce, 2003, p.80), there is textual logic in the Qur'anic instruction that a son inherit the share of a daughter, amongst such other provisions. The reason given for this is that in any Muslim family, the male members undertake total responsibility for the sustenance and economic needs of the female members. This being so, it is in the Islamic law of inheritance to give more property rights in inheritance matters to qualify them to fulfil their religious responsibilities (Chaudhry, 1988, p.80). If this is so, the application of the Islamic law of inheritance in Nigeria appears to only be a partial implementation of the Islamic law of inheritance with the Islamic principle of equality of inheritance between male and female heirs.

not go further to erect an apparatus for investigating that corresponding responsibilities also enjoy fulfilment. A scenario may thus be envisioned where a brother inherits double the share of his sister entirely for his own benefit. In such situations, there appears to be no avenue to enforce the sister's entitlement to alimentary support from her brother. This line of argument is further pursued and analysed in the subsequent two sections of this work.

The Present Status of Shari'ah and Ihrl as Legal Norms in Nigeria

Shari'ah

The 1999 Constitution of the Federal Republic of Nigeria (hereinafter 1999 CFRN or the Constitution) recognises Shari'ah as a source of law in Nigeria. The constitutional references to Shari'ah are mainly contained in chapter VII, Parts I and II, which is entitled 'The Judiciary' and provides for the establishment of federal and state courts. Specifically, sections 260-264 provide for the establishment, composition and jurisdiction of Sharia Court of Appeal for the Nigerian Federal Capital Territory, Abuja. Similar provisions are also contained in sections 275-279 in respect of the establishment, composition and jurisdiction of a Sharia Court of Appeal for any of the remaining federating units 'that requires it'. Of particular importance in the context of the present work is the extent of jurisdiction conferred in Islamic matters on the Sharia Court of Appeal either of the federal capital territory or of a State. Thus, according to the provisions of section 277 of the 1999 CFRN, which is *in pari materia* with those of section 262 of the same Constitution regarding the Sharia Court of Appeal of the federal capital territory, -

- 277 (1) The Sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.
- (2) For the purposes of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide-
- (a) any question of Islamic personal law regarding a marriage concluded in accordance with that Law, including a question relating to the validity or dissolution of such marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;
 - (b) where all the parties to the proceedings are Muslims, any question of Islamic personal law regarding marriage, including the validity or dissolution of that marriage, or regarding family relationship, a founding or the guardianship of an infant;
 - (c) any question of Islamic law regarding a *wakf*, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;

- (d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind, who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or
- (e) where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.

In accordance with the above cited constitutional provisions, a Nigerian States have established within their territorial jurisdiction a Sharia Appeal. As earlier said, Kwara state is one such state. It is important to state by section 13 of the Sharia Court of Appeal Law of Kwara State, Cap. S4 Kwara State, 2006 (whose provision is mirrored in the Sharia Court of Appeal of other states with this court type); the scheme of interpretation of Islamic law as being according to the Maliki school of thought. This same section provides in its paragraph (d) that in the process of adjudication, the court have regard to 'natural justice, equity and good conscience according to Islamic

IHRL

Nigeria is presently party to most of the major international human instruments presently constituting IHRL.¹ Nevertheless, international treaties have direct domestic application in national courts unless specifically a municipal statutes by an Act of the National Assembly. Accordingly, see the 1999 CFRN provides-

- (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.
- (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.
- (3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation.

¹Details of the country's ratification/accession of human right treaties can be found at

Nigeria operates a federal system of government comprising a central authority and federating units (section 2 (1) and (2) of the 1999 CFRN). The National Assembly is the federal legislative arm of government (section 4 (1) of the 1999 CFRN) while the law-making arm for each and every of the federating units is the relevant House of Assembly (section 4 (6) of the 1999 CFRN). The National Assembly is empowered by sections 4 (3) and (4a) to make laws in respect of any matter covered within the Exclusive and Concurrent Lists. While the National Assembly enjoys concurrent powers with the Houses of Assembly of the federating units regarding matters contained in the Concurrent List, it exercises sole powers in matters on the Exclusive list (section 4(3) of the 1999 CFRN). It is pertinent to state here that by section 4 (4b) the National Assembly has additional powers to legislate in respect of 'any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.' This last provision appears relevant to the powers of the National Assembly regarding the domestication of international treaties. As can be seen from the quoted provision of sections 13 (3) and (3), the National Assembly is the only body empowered to enact international treaties as domestic legislation. This is regardless of the fact that the subject matter of the treaty concerned is covered essentially by the Concurrent list or that the subject matter is such that the Houses of Assembly of the federating units have residual powers. The only requirement in such cases, as provided by section 12 (3), is that the implementing bill must have been 'ratified by a majority of all the Houses of Assembly in the Federation'.

The Nigerian Constitution does not contain express provision regarding which particular branch of the federal government that has the power of entry into any international agreement on behalf of the country. What has been the practice is that it is the executive arm of government that has exclusive powers in such matters (Egede, 2007). Although Nigeria has been described as 'active in signing and ratifying human right treaties' (Egede, 2007 p.249) a perusal of the Nigerian law books shows that only the African Charter on Human and People's Rights, 1981 (the African Charter) appear to have been directly incorporated as municipal legislation on the issue of human rights. The African Charter has the force of domestic law in the form of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, which was promulgated by the National Assembly in 1981. At present, it exists as Cap. A9 Laws of the Federation of Nigeria, 2004. It is important to state, however, that a number of the provisions of the International Covenant on Civil and Political Rights, 1966 also exist as constitutional guarantees enforceable in the Nigerian courts (Chapter IV of the 1999 CFRN; Nowak, 2007). Similarly, a number of rights recognised by the International Covenant on Economic, Social and Cultural Rights, 1966 are expressed in chapter II of the 1999 CFRN as non-justiciable 'Fundamental Objectives and Directive Principles of State Policy'. Again, most of the provisions of the Convention on the Rights of the Child, 1989 are protected under the Child's Rights Act, Cap. C50 Laws of the Federation of Nigeria, 2004.

The issue of lack of direct domestication of other human rights which Nigeria is party has not gone entirely unnoticed by some relevant treaty bodies. For example in 2004, the Committee on the Elimination of Discrimination against Women (CEDAW), which is responsible for monitoring state parties' compliance with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (the Convention or CEDAW) noted that –

[A]lthough Nigeria ratified the Convention in 1985, the Convention still has not been domesticated as part of Nigerian law. It notes with concern that, short of full domestication, the primacy of the Convention over domestic law is not clarified nor is the Convention justiciable and enforceable in the Nigerian courts. The Committee urges the State party to place high priority on completing the process of full domestication of the Convention. (Report of the Committee on the Elimination of Discrimination against Women' 2004, GA Supplement No.38 (A/59/38), para 291-2).

In 2006, the CEDAW had cause to comment again on the issue of domestication of a draft bill to incorporate the Convention as municipal legislation was before the Nigerian National Assembly. In the specific words of CEDAW –

Noting the rejection by the National Assembly of a 2005 draft bill on full domestication of the Convention, the Committee expresses its concern that the Convention has yet to be domesticated as part of national law despite its ratification in 1985 without any reservations. As expressed in its previous concluding observation of 2004, the Committee is concerned that without such domestication, the Convention is not part of the national legal framework and its provisions are not justiciable and enforceable in Nigerian courts. (CEDAW/C/NGA/CO/6, Para 11).

At this juncture, it appears important to ascertain the normative observation by CEDAW in Nigeria in relation to all other national legislative observation by CEDAW in 2004 noted above appears to have taken for granted the primacy of a domesticated human rights treaty over other municipal law following words – 'short of full domestication, the primacy of the Convention domestic law is not clarified'. However, the issue of primacy of international rights instruments has no constitutional provision² nor does it appear in Nigerian jurisprudence. A relevant Nigerian judicial authority on this point is *Abacha v Fawehinmi*. The appellants comprised the head of the then military regime and three other officers of the regime while the respondent was a legal practitioner. The respondent was arrested without warrant in 1996

detained at a Nigerian Prison in Bauchi state. He was neither informed about the charges with any offence. The respondent challenged his arrest in the Federal High Court and sought, *inter alia*, a declaration that his arrest and continued detention contravened the human rights provisions of the Nigerian Constitution and relevant articles of the African Charter, which existed then as Cap.10 laws of the Federation of Nigeria, 1990. The Federal High Court, at the invitation of the appellants, declined jurisdiction on the basis that the human rights provisions of the Constitution had been ousted by the relevant constituting Decrees of the then Military government (that is to say, the Federal Military Government (Supremacy and Enforcement) of Powers Decree No. 12 of 1994 as well as the Constitution (Suspension and Modifications) Decree No.107 of 1993). In addition, the court held that those provisions of the African Charter that were inconsistent with the Decrees were void just as any other Nigerian law being 'subject to domestic law and ouster decree'.

On appeal to the Nigerian Court of Appeal, the Justices of the court were unanimously of the opinion that although the African Charter 'was promulgated by the National Assembly in 1983, it is a legislation with international flavour and the ouster clauses contained in Decree No.107 of 1993 or No.11 of 1994 cannot affect its operation in Nigeria'. The court further held that the provisions of the African Charter are protected by International Law and that 'the Federal Military Government is not legally permitted to legislate out of its obligations'. Unsurprisingly, the appellants challenged this decision at the Supreme Court. The seven Justices of the Supreme Court who sat on the appeal were divided on the issue. The majority opinion, comprised of four Justices, confirmed the position of the Court of Appeal regarding the status of the African Charter *vis-à-vis* other municipal laws. However, Ogundare JSC who delivered this judgment of the court was quick to add that:

But that is not to say that the Charter is superior to the Constitution.

Nor can its international flavour prevent the National Assembly, or the Federal Military Government [from] removing it from our body of municipal laws by simply repealing [it]. Nor also is the validity of another statute to be necessarily affected by the mere fact that it violates the African Charter or any other treaty, for that matter- see: *Chae Chin Ping v United States* 130 US 181 where it was held that Treaties are of no higher dignity than acts of Congress, and may be modified or repealed] by Congress in like manner and whether such modification or repeal is wise or just is not a judicial question.

For the minority opinion, read by Achike JSC, it was considered that since the legislation incorporating the African Charter as domestic law in Nigeria does not specifically place the Charter on a higher status as it relates to other municipal laws, there was no legal basis, therefore, for doing so. From the discussion so far, it may be said that the issue of primacy of domesticated international human rights instruments as they relate to other Nigerian municipal laws is still very much on shaky ground, unless there is a constitutional amendment to that effect. This seems to be an unlikely

point to this foreseeable future. In the current author's opinion, legislation by legislation of human rights instruments, or any law which is declarative ensure their primacy need not be the only way to establish efficacy of international treaties. Unincorporated as well as incorporated instruments may be adopted 'as an aid to interpretation' (Padgug, 2007, p.284) if judicial proactivity is warranted. A relevant example is the provision of section 2 of constitution of South Africa. The section entitled 'Application of laws etc.' states that 'when interpreting any legislation, every court must give an alternative interpretation of the legislation that is consistent with international law'. This alternative interpretation that is inconsistent with international law seems apparent to have already taken into consideration relevance of international human rights treaties to which Nigeria is party in some extent though the provision referred to in the South African Constitution is not repeated in its Nigerian counterpart. For example, in the case of *Mahama v Attorney General*,¹⁶ the Nigerian Court of Appeal, Justice Nikki Tobi, who gave the majority decision in the case, stated that the provisions of the constitution of "Nigeria" as violating the provisions of

E.A.O.

Conclusions: Propositions for Future Legal Developments

Two interrelated points may be surmised from the discussion of the law of intestate succession in Nigeria. Firstly, an individual possesses a vested interest in respect of accumulated estate during his/her lifetime, which may be dispossessed by inviting the discretionary power of the testator to make any part of the estate for the alimentary power of his/her dependent relatives. Also, it is noteworthy that only a spouse in a customary marriage with a decedent as opposed to a customary marriage with a person other than the decedent is entitled to a share in the decedent's estate. Secondly, in petition the courts in such circumstances. As earlier stated, the number of existing marriages in Nigeria were contracted under the various religious regimes. In some cases, however, a male decedent may have contracted a combination of both statutory and customary marriages. This may involve a situation where a man in a subsisting statutory marriage contracts subsequent polygamous customary marriages. It is, therefore, that the law would in the described scenario be applicable with from being disinherited by an exercise of testamentary power. Thus, the customary marriages would, thus, be left entirely at the discretion of the testator and caprices of their husband. There is no legal impediment of their right to alimentary provisions from the estate.

Secondly, a decedent's testamentary capacity may in fact be inconsistent with the decedent's religious beliefs. If a decedent's testamentary or religious law of inheritance that the decedent is subject to such provisions may be intended to operate to the detriment of such persons that they cannot be disinherited by the decedent.

will or bequest. As earlier discussed, in some cases the application of customary rules of inheritance has served to bar a decedent from employing testamentary power to escape matrimonial and parental responsibilities especially in polygamous situations (for example, *Ajibaye V Ajibaye*). However, a consideration of the various kinds of custom and religion-inspired rules of inheritance in Nigeria indicates that the operation of these rules is sometimes prejudicial and detrimental to the interests of female dependent relatives in two significant ways. In the first place, they are either outrightly disinherited by not being recognized as part of the inheriting group in the first instance on gender basis. Secondly, they may be discriminated upon in such ways that whatever is inherited is so minimal or has little significance in catering for their alimentary and other socio-economic requirements. Further, as demonstrated, some women may also be required to undergo degrading and in some cases objectionable rituals in order to be recognized as legal heirs. In addition to all these, a number of the customary regimes of inheritance discussed in this work either discriminate against a decedent's minor children regardless of sex or do not adequately protect their legal rights in the estate of their deceased parent.

It is for the above stated reasons that the current author is of the view that the regime of inheritance in Nigeria requires streamlining through some guiding principles. As some writers (for instance, Williams, 2004; Eweluka, 2002) have correctly argued, it is usually the case that a number of victims of denial of inheritance or discriminatory inheritance practices are confused as regards the correct avenue for the ventilation of their grievances. Likewise, they may be unaware of the applicable laws to their particular situations as a result of the complexity of legal sources. Most importantly, there is the element of uncertainty in respect of what may constitute the outcome of a legal recourse at the end of the day. What appears to be the missing piece of the puzzle is a set of overarching guiding principles that has the potential to be applied in varied situations without requiring homogeneity. That is to say, a set of principles that can guide the distribution of estates regardless of the regime of inheritance adopted. It is expected that such principles may ensure similar results with a reasonable level of predictability that victims of denial of inheritance as well as discriminatory inheritance practices might be confident enough to seek legal redress.

This is where IHRL becomes, in the current author's view, indispensable. The conception here is that IHRL possess the arguments to ensure to a large extent (and perhaps more than any other contemporary enterprise) a standard of conduct from varied situations and circumstances without requiring that such situations are essentially the same in substance and form. For example, its terminology may be adopted in arguing that while it is not specifically required that all forms of estate distribution follow a particular suggested trend, some just and equitable standards must be ensured at all times. This is where the rules of inheritance in Shari'ah become relevant. Although the pragmatic application of the Islamic law of inheritance has brought about some criticisms, it was demonstrated that the

of such that can ensure just and equitable distribution of a estate (1971, p. 1; Khan, 2007, p.230). So that by making both a custom and religion-inspired non-discriminatory interpretation and application of Shari'ah as well as Shari'ah providing normative d principles of inheritance as well as the theory of just and equitable principles of inheritance as a basis for inheritance regime liable to adaptation across cultures may be constructed.

In the Nigerian contextual example of multifarious custom and religion-inspired beliefs that influence its systems of inheritance, such a comparison of guiding 'universal' principles is not only desirable. Moreover, such principles constitute an essential tool for adjudication by the courts in such cases of reference for victims and their advocates.

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Circulation Procedures and the Functions of Circulation Librarian: A Case Study of Nigerian University Libraries

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Abstract

University libraries acquire resources to support their information research programs. This explains why various library services have been developed and made available to its patrons immediately on demand. One of the basic objectives of any library is to make its book materials readily available to its patrons immediately on demand. Circulation of library lending comprises the activities around a library books and other material to users of a lending library. A lending department is one of the key departments of a library. This circulation procedures and the functions of circulation unit at the University of Ilorin. The strategic position of the circulation librarian as the information in fulfilling the objectives of the library and the University are highlighted. This paper highlights the activities of the circulation unit and its users. The purpose of this paper is to provide the reader to the basic concepts of library circulation information is made available to users. Using the University of Ilorin circulation system as the setting, the study further explains to the library materials, what types of materials they may take out from the library and the problems that plague the unit and proffers solutions to these problems.

Keywords: Academic library, Library circulation procedure, Circulation library loan-desk and Library user education

Introduction

The University of Ilorin Library was established with its University of Ilorin in 1975. Its administration is centralized under the University Librarian. Apart from the main, Law and E-library