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EXPLORING LAND OWNERSHIP AND INHERITANCE IN NIGERIA

Abstract

This paper will aim to investigate into women's rights pertaining to land in Africa particularly as the case may be envisaged in the Nigerian cultural and legal system. Research has shown that many African women such as in Nigeria are left impoverished once their husbands die or they divorce in West Africa as the land automatically becomes the property of the dead husband family. The case applies also to a polygamist family where a man may be married to four women with many children and if the man dies in many cases, the first son takes over all the wealth of the father according to the native law and custom. It also applies to women born outside marriage and brought up by grandparents, when the granddad or grandmother becomes late, the women does not inherit any land from the family. This obviously has implications for the women and child education, hence may be in breach of human rights Protocol to which Nigeria is a signatory in regards to equality and right to education.

The paper will seek to explore the legal framework for equality in Nigeria from the Human Right Protocol in relation to the legal rights of women involved in land disputes. It will look at the implications of this problem to the women and their children education. From the analysis of the key issues, it will aim to make suggestions and strategies to overcome the barriers that many women face in relation to unfair distribution of land or wealth in the absence of their spouse or family member. The paper will draw on relevant case-laws and their compliance to the Human Rights protocol (right to education and equality) as well as recommending strategies for the Nigerian women victims to fight for justice.

Key words: Human Rights, Law, Land, Culture, Custom, Equality, Education, Women, Children, Family, Poverty and Denial

Introduction

This paper explores the issue of land ownership in Nigeria. In order to do this, the paper will look at the issues within a legal framework that is based on equality. For the past decades, according to the African traditions and customs as noted in Africa, men have been seen as the primary land owners. However, the women do not share the same right. For instance, on the death of husband or father, the wives and female children do not automatically inherit the land. Women denial of the right to acquire land or inherit land at the death of a husband is a big issue in Africa as well as other countries in the world as women are continuously suppressed by the men, husband families or immediate family hence leading to denial of the right to inherit land in husband place or own family. The impact of this has led to many of these women becoming very poor and what more cannot afford to be educated which also affects their children education. The question to ask is: what is the role of

the International and Human Rights law to protect the right and access to land for the women that are deprived of inheriting land in the absence of husband?

This paper will therefore, look at this issue by providing some background information, land ownership as seen in Nigerian context, legal framework and, the general consequences.

Background Information

The inequality in distribution of land in Nigeria has become an issue of concern for Nigerian women particularly since after the case of Okocha versus Okocha 2011, from the Rivers State Nigeria. Writers and researchers have argued and debated about the role of customary land rights in legal empowerment of women in Africa of which Nigeria is one of them. Many women's organizations, gender activists and scholars argue that customary law provides limited access to land for women (Whitehead & Tsikata, 2003; Tripp, 2004). Based on the international and regional human rights instruments, they call for legislation that replaces customary law and enables women to inherit, purchase and own land in their own name land for women and more so at the death of their husbands.

Land Ownership in Nigerian Context

Land is a crucial economic resource and source of livelihood in the world particularly as the case maybe in Nigeria as people depend on land for a living. A Traditional Nigerian has always viewed land as the fundamental element of their economic well-being as well as part of social and cultural identity. There are some common characteristics identified in African land-holding systems: a) collective ownership of land by the tribe, the community or the lineage; b) inalienability of land; c) flexible access mechanisms to land and land-related resources; and d) community-based land administered and managed by the Chiefs who are in charge of the village disputes.

According to Emery (2005), speaking about property in Nigeria which is closely linked with speaking about land, the systems of land tenancy have a major impact on the sets of rights to property that can be inherited in Nigeria. She further suggests that Land is divided into three major types: communal land, individual (or private) land, and public (or state) land. Customary land is held as "corporate aggregate", through groups such as towns, patrilineal or matrilineal groups, and family systems. Such land can be used jointly, by any member, or divided amongst families for use. This land may be distant farmland, forest, or spaces like the market square. Alienation of such land is not possible without consent of the community. In contrast, private tenure in customary systems tend to be on the basis of the family unit; with the family head distributing rights to land that are inheritable to children, but non-alienable without consent of the family head. It may be stated that the head of the family in most Nigerian contexts are predominately male and have the right to land inheritance.

Emery (2005) also presented an argument that the requirement of family consultation is a rule of law, and not a matter of convenience. While all individuals who are members of the community or family have a right to a portion of the land, this does not hold true for women as they are viewed as temporary members.

Therefore, they do not have permanent and inheritable rights to the land, but rights to use and enjoyment of land while physically in the family. Individuals may also hold land in their own right for example, through clearing vacant land. However, most land is acquired through inheritance within customary systems. Finally, in considering inheritance rights to land, it is also important to recognise that land has a spiritual value for many Nigerians as home to ancestors.

As Gender Across Borders (GAB) (2012) presents, in most parts of sub Saharan Africa, women play vital role in food industries, nutrition and security which cannot be over looked. Women are the producers of food in most African countries in the areas of farming in the communities. Women are also play the role of house wives and cater for food for families. Yet women in many African countries do not have access to and control over land, and this limits the types of food crops they can grow as well as their economic security.

GAB further argues that women's access to land in Nigeria is especially limited in the Southeast and south where cultural norms and traditions forbid a woman to own land. In spite of the increased awareness about gender equality issues in the past three decades, these cultural dictates have been largely unchallenged at the local level where it matters most. Globally, there has been an increased focus on land rights as they are so pertinent to various aspects of development. According to Wickeri and Kalhan (2010), land ownership can be a critical source of capital, financial security, food, water, shelter and resources.

The Global Land Tool Network (GLTN) (2011), a United Nations (UN) organisation has found that rural landlessness is a strong predictor of poverty and hunger, and negatively impacts Empowerment and the realisation of human rights.

Several scholars argue that women's lack of sufficient land rights negatively affect their immediate families, education and the larger community as well, with land ownership, women can develop an income more fairly within the household. Hanstad (2010) suggests that providing sufficient land rights for women is beneficial because:

- Women are less likely to contract and spread HIV/AIDS as they do not have to resort to prostitution.
- Women are less likely to be victims of Domestic violence.
- Children are more likely to stay in school longer.
- Women have better access to Microcredit.

Legal Framework in African Context

According to Women's Land Link (2010) in many parts of the world, Africa being good example women have access to land in order to cultivate the land; however, there are traditions and cultural norms which bar women from inheriting or purchasing land; thus putting women in a place of dependence on their husbands, brothers, or fathers for their livelihood and shelter. Should there be an illness, domestic violence, or death in the family, women would be left landless and unable to either grow crops for food, or rent land for profit. Land ownership for women is a crucial form of security and income, increasing empowerment and decreasing poverty.

Women's Land Link Africa has been making great strides in their efforts to secure women's access to land and housing through community mapping, local dialogues, watchdog groups, peer exchanges and community paralegal training.

Marriage

According to Emery (2005) the major means through which individuals are differentiated and placed into a system of inheritance is through the form of marriage that they chose to adopt, be it a civil marriage, or under a customary or sharia system. In Nigeria there are four forms of law being Sharia law, customary law, common law and statutory law.

Sharia Law

Under Islamic law, both men and women have equal rights to hold property and typically do so individually. Land tenure is divided into three categories: occupied land, which is land in use; unoccupied land, which can be obtained either by grant from the Emir or Village Chief if located in town, or clearing if it is land outside town; and common land, known as waaf, which is used for public activities (Sait & Hilary, 2009).

The sharia system is clear and simple as is specified in the Qur'an. The basic principle under the Maliki system is that if a Muslim dies intestate his estate must be shared between his heirs entitled to share under Islamic law, and that his male children must have equal shares and his female children half share each of a male child. Only children who are non-muslim or commit patricide to inherit loose these rights.

The general division is that if there are children, widows are entitled to one eighth of the property, including realty, and they are entitled to one quarter of the property if there are no children. Daughters take half the share of their brothers, and if they are the sole survivor, will take half of the rest. It is also apparent that even in the Islamic custom, the women right in terms of access to land or property is still limited (Sait & Hilary, 2009).

Customary Law

According to the BBC Africa debate (BBC, 2011) on 'Should Women have equal Inheritance Rights?' under customary law across many African countries, when a man dies, it is his adult sons who are entitled to his property, at the expense of his daughters. The international Human Rights Law group highlighted that, in Nigeria, customary law has been used to settle at least 80% of land disputes to the disadvantage of women.

Legal Framework from the Human Rights Perspectives

English Common Law

The English common law, as well as statutory law, remains an integral part of the Nigerian legal landscape, defining the default position in the absence of domestically enacted law or adherence to customary law. English law entered Nigeria through the Doctrine of Reception. Generally, reception is dated as of January 1st 1900, concomitant with the British government gaining control over the territory of the Royal Niger Company.

Widows Rights

According to Kasunmu and Salacuse (1966), the spouses have no right in each other's property either during marriage or on the death of one of them. The husband may during his lifetime allocate a house or land to the separate use of his wife. Unless an outright gift is proved, the property allocated to the wife will on the death of the husband still pass as family property. Rather, the widow's right in the land is to mere possession of a parcel of family property subject to her good behaviour. Therefore, the widow lacks any rights to control the property, and is vulnerable should an absentee son or a family member fail to ensure she has access to the land.

Emery (2005) argues further that women's inheritance rights are an excellent place to begin a critical re-examination of Nigeria's legal framework. Widows are beginning to come to public attention as a set of individuals who are particularly vulnerable in the face of HIV. As many AIDS widows have limited rights to inheritance, their ability to subsist in a land-based economy is placed in jeopardy. At the same time, widows may play a pivotal role in provision for AIDS orphans and sick relatives as HIV incident rates continue to grow in Nigeria.

General Consequences

Getting girls into school

According to the article battling for equality on all fronts a consequence of gender inequality with regards to draconian laws that have prevented women from gaining inheritance rights to land has meant that many young girls have been denied an education they deserve. For many young women in Nigeria education is a way out of poverty.

Disparities between girls and boys start in primary school and the differences widen through the entire educational system. Although Africa, of all regions, registered the highest relative increase in primary school enrolment during the last decade, it is still far from attaining parity. The good news is that by 2011, sub-Saharan Africa had significant girl's enrolment. Together with South Asia, primary education level enrolment in sub-Saharan Africa rose to 23 million, up from 20 million a decade earlier (Mwabu & Ackerman, 2013).

Sources

Policies specifically targeting girls were responsible for notable improvement in countries such as Benin, Botswana, the Gambia, Guinea, Lesotho, Mauritania, Namibia and Liberia. In Benin for instance the gender gap has narrowed, thanks to policies such as sensitizing parents through the media and reducing school fees for girls in public primary schools in rural areas which has helped reduce some of the problems faced in educating children.

However, according to UNESCO's most recent report on Teaching and Learning, Nigeria has an alarming proportion of about 10.5 million out of school children, the highest number across the world, education is not evidently anywhere at its best in Nigeria (UNESCO, 2013). In Nigeria as in many countries in Africa when a situation arises and a choice has to be made whether to send a male or female child to school the majority of parents opt to send the male child to school rendering the female child to a life of poverty and lack. Secondly, Nigeria is one of

the top ten countries with the highest population of illiterate adults-many of these being women.

In most instances parents are faced with difficult choices as access to a good education is not free although this varies from state to state. In Lagos for instance, an area that is highly populated private school fees in the middle income sector begin in the region of over £2,000 per term many parents have limited options on whether or not to send their children to a private school as the public schools (state) are under-funded and class sizes are huge, in the worst-case scenario there may be up to 80 students per class.

As a result of poor education in Nigeria in some cases, wealthy parents opt to send their children abroad as private fees in some schools in Lagos are comparable to fees in the United Kingdom. This is an option beyond the limits of many Nigerian families particularly the widows and those born outside the family.

Methodology

This is a mini survey that focused on women who have experienced problems with access to land as a result of loss of husbands, those born outside marriage and those from polygamist families. The small-scale research was conducted to find out how Nigerian women perceive their rights of land in relation to loss of husbands, born outside marriage and being a woman and if this denial of right to inherit land has a consequence on their children education. A sample number of 15 women residing in the UK and Nigeria participated in the survey exercise. Telephone interviews were used to gather key issues as highlighted which is sufficient for this mini survey. All the participants are mature adults and gave consent to be interviewed.

Participants Comments

A lady lost her husband the UK who was a Nigerian heritage. The extended family back in Nigeria insisted that she should sell the entire dead husband's property in London so that the extended family the inheritance of the man's property as well as his land in Nigeria. (Participant 2)

Although, the women refused to accept their demand, in African customary law, the husband's family is right.

I come from an extended family. My father was a Chief and he married 4 wives with sixteen children, ten girls and six boys. Unfortunately, our father suddenly passed away without writing a will. There was big problem amongst the children as the first son demanded his right of taking over the father's property including all the assets. This involved the elders of the village to intervene. The king of our village dismissed the case on the ground that the first son has automatic right to all the land and wealth of the father, although sharing will be at his discretion. For us our mother did not have a boy. We are four girls, three are married. I am not married, although have two boys outside marriage and still live in my mother's compound but no right to my natural father's assets, nor my children with any right for land. Women in Africa are not seen to inherit wealth, because you have to respect the tradition. Very sad. This means a big struggle to feed and educate my children on

my little income. My first son cannot go to university as I cannot afford his school fees. It is not easy. (Participant 5)

Husband died and left me with five children. On the day he died, brother-in-law asked me to declare all the assets of my husband including his bank account details. I could not believe this, I refused him. To my greatest surprise, he moved in to one of my husband's property. Eventually, he took over everything claiming that he is next to my husband and therefore should take over his role. My children were very young, I took the matter to the elders, nobody was willing to support my case because, they saw it as his right. I was divested; I managed to sell his cars, took all the money in his bank account and came to London to educate my children. Thank God I did that. (Participant 10)

Land cases for women are a big issue because no one wants to know. My case is a good example. My mother did not marry. I lived with my grandmother who passed away in 2009. I continued to live in her house alone until my uncle returned back from Lagos. He asked me to pack out of the house for him to rent to tenants. I refused and decided to summon him to the village chief. My case was dismissed on the ground that my mother was not married and therefore I could not inherit land or my grandmother's property. It was then it daunted on me that I had no Right of Land or Property in my mother's compound as well as in my father's land. Who suffers, me and my children? I have to work extremely hard to educate my children single handedly. Thank God that they have all done very well. (Participant 12)

Conclusion

This paper has raised an issue that needs much attention – land ownership for women. This paper does not allow the space to discuss this issue in much depth. It has just raised awareness of the issue. The issue of inequality in Land distribution to Nigerian women obviously has implications for the women and child education and might be in breach of human rights Protocol to which Nigeria is a signatory as regards to equality and right to education (Article 2).

Based on the responses from the participants, the paper recommends more advocacy and knowledge on gender equality, a change in the status of women in local communities many of whom are suffering needlessly as a result of ignorance and discrimination and more consultation on women's access to land by government authorities and policy makers.

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