Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue.

1.0 INTRODUCTION

The patterns of inheritance and succession, particularly under intestate estate under customary law in Nigeria, have almost as many variations as there are ethnic groups in the country, and many of the variations are discriminatory in practice. The law of succession and inheritance reflects Nigeria's plural legal system. Indigenous customary law developed rules of inheritance for intestacy through the traditional canon of descent, as adapted over the years to changes in the society and the rule of natural justice as applied by the courts. Fortunately, nongovernmental organizations have been active in attempting to rectify the problems of discrimination.

Rather than trying to cover all the patterns of succession, I examine a few of the succession patterns with particular reference to the discriminatory aspects under customary law. I also propose reforms. Finally, I recognize the important work done by nongovernmental organizations in Nigeria.

2.0 STATEMENT OF THE PROBLEM

While the law of inheritance and succession under English law is reasonably settled, the aspect dealing with customary law is not, which breeds conflict and acrimony among heirs. What's more, the law discriminates among beneficiaries. Some are accorded rights of inheritance and others are not. Consequently, this customary law falls under the repugnancy doctrine test and, more important, international conventions against discrimination.

One example is the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), an international document that establishes standards of equality between women and men. The convention was adopted by the United General Assembly on 18 December 1979, and was made binding on ratifying states on 3 September 1981. CEDAW provides a framework for developing and applying equality norms to specific conditions in different countries and legal systems. This international bill of rights for women also stands as an agenda for action to guarantee these rights. In its preamble, the convention states that extensive discrimination against women continues to exist, and it emphasizes that such discrimination violates the principles of equality of rights and respect for human dignity. Article I of the convention defines discrimination against women as “any distinction, exclusion, or restriction made on the basis of sex in the political, economic, social, cultural, civil or any other field.”

Article I further defines discrimination against women as anything that can bring about unequal treatment between men and women while carrying out their livelihood. This article groups married and unmarried women together. Article 13 stipulates in part that women have the right to obtain family benefits, while Article 15 states, *inter alia*, that women have equal rights with men in matters of law related to business contracts. Under Article 16, women are empowered to own and give away their property. State parties to the convention are obliged to refrain from acts that would defeat the object and purpose of the convention—namely, the elimination of *all forms* of discrimination against women. Each party must report on its progress to the committee. The
implementation of the convention is monitored by the Committee on the Elimination of Discrimination Against Women (CEDAW), which is composed of 23 experts elected by state parties. The Committee meets annually in New York.

Gender discrimination is currently receiving the attention of the world community. The position of women in law and society has attracted public sympathy and interest.

Apart from CEDAW, other documents apply, such as the African charter—a regional bill—and national Constitutions that prohibit discrimination on the ground of sex in all categories of rights. Having ratified the CEDAW treaty, Nigeria is generally bound by its provisions, so any laws or procedures to the contrary must be declared null and void. Unfortunately, Nigerian courts have long sustained some of the customary practices that subjugate women, as demonstrated in the case of *Nwanya v. Nwanya*. The case of *Mojekwu v. Mojekwu*, however, has marked a turning point. The Court of Appeal in that case struck down, as repugnant to natural justice, equity, and good conscience, the Oli-ekpe custom in Ibo land, which bars women from inheriting land.