

Right to Inheritance in Nigeria: a Liberation For Widows

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ABSTRACT

From the beginning of time, transition from one generation to another has been one of the characteristics of human existence. Such transition includes assets and, in some cases, liabilities which are handed down to the succeeding generations. Generally, the intestate succession under the customary law among the various tribes in Nigeria is full of discrimination, especially to the female gender, adopted children, illegitimate children, among others. This article examined the right Nigerian women have to inherit under the customary/intestate laws of the major ethnic groups (Yoruba, Hausa and Igbo) and sought to bring to light the fact that discrimination of women, for any reason is a breach of their fundamental human right and although laws and statutes are in place, enforceability is still an unsettled problem due to customary laws and beliefs of each community.

Keywords: *Right, Inheritance, Liberation for widows, Women's right, Novel development,*

Introduction

From time immemorial, African custom is a community-based system of law^[1]. The family system is therefore the most important social construct in African society. In western society, the most common family form is the nuclear family consisting of a single father, mother and the children. However, in the traditional African family, a family consists of more than the nuclear family due to the polygamous nature of the customary marriages in Africa: These customary marriages create separate households which creates a family group controlled by the family head. This family head is also very important in matters relating to succession and inheritances.

Inheritance however, means property received from a decedent, either by will or through state laws of intestate successions, where the decedent has failed to execute a valid will.^[2] Inheritance laws are those statutes and regulations affecting those entitled to receive what from the estate of a deceased relative. There are twin regimes in place to regulate the law of inheritance; Testate and Intestate. Testate is when an individual leaves a will on death and his estate will be shared according to the will, while Intestate is where an individual does not leave a will on death and their estate will be distributed by the laws of Intestacy which are governed by the Succession Act 1964 and in Nigeria the customary laws of each community governs the distribution of estates.

It is flexible and changes with time; however, it guides the deceased estate when he dies intestate. The custom must be proved and judicially noticed in court before it can be enforceable. Customary law being one of the sources of intestate succession must satisfy some tests before it can be pronounced as enforceable and acceptable by the court. It must not be repugnant to natural justice, equity and good conscience. It must not be contrary to public policy; the law must not be incompatible either directly or indirectly with any law in force at the time including the constitution.^[3]

There are many customs practiced in Nigeria but the prominent groups are; the Yoruba, Igbo and Hausa customs. In all these divisions, there are certain modes of inheritance. In majority of the cultures in Nigeria, the mode of succession is patrilineal;^[4] the right of inheritance is traced through the male descent.^[5] This practice acquires different forms like primogeniture, ultimo geniture or any other variant^[6]. Primogeniture is the rule whereby the eldest male in a given group of relatives inherits the property to the exclusion of all others. In *Bhe v magistrate, khayelitsha and others*,^[7] the constitutional court held that the rule of primogeniture, which is in practice in African customary law, is in violation of the protection of the constitution for equality and dignity. It held that primogeniture is discriminatory in terms of gender, birth order and legitimacy because it precludes widows, daughters, younger sons and extra marital children from inheritance. According to the court, the practice of excluding women from inheritance is entrenched in the practice of patriarchy and violates the right of women to equal treatment and human dignity^[8]. The modes of distribution and practices of the three major tribes in Nigeria i.e. Yoruba, Igbo and Hausa, will be reviewed and examined.

Women's Right to Inheritance in Yoruba Land.

In Nigeria, female children and widows' rights to inherit their father/husband's property in most tribes are somewhat similar. Under the various customary laws in Nigeria, the mode of distribution is fixed. The qualification for inheritance is generally traced or dependent on blood ties. A person cannot qualify to inherit from a deceased on any basis outside being the same blood, whether full or half. In practically all customs, marriage is not a benchmark for inheritance, at least as far as women are the issue, as wives^[9]. In *Ogunkoya v Ogunkoya*, ^[10] the Court of Appeal, Lagos Division held that wives are regarded as chattels who are inheritable by other members of the family of the deceased under certain conditions.

Nigerian women face the most challenges under intestacy, a woman cannot inherit her deceased husband's property but his children inherit the property. In a situation where the wife could not give the deceased any children, the property of the husband goes to the brothers and other relatives. The case of *Suberu v Sumonu*^[11] illustrates this view. The court upheld the Yoruba custom that a wife cannot inherit her husband's property and where there are no children alive at his death, the property will devolve on the members of the husband's family either paternal or maternal. The absence of the widow's right to inherit the deceased property is evident in the case of *Aileru & ors v. Anibi*^[12], where Jibowu J. held that "under native laws and customs, widows cannot administer the estate of their husbands". Also in the case of *Akinubi v Akinubi*^[13] as declared by the Supreme Court that a widow can be

inherited by her deceased husband's family and should not apply for a grant of letter of administration nor appointed as a co-administratrix of her deceased husband estate.[14] The above cases show that women are treated as chattels which are inheritable by members of her husband's family.

Where a Yoruba man dies intestate, there are disputes as to who will inherit his estates especially when he married more than one wife. The court in *Oloko v Giwa*[15] held that widows are only allowed to remain in the house or a portion of farm land but cannot inherit their deceased husband's property. The widows have processor right and not exclusive right over their deceased husband's property. It was the opinion of the court that inheritance is by blood and widows are not blood relatives of the deceased hence cannot claim a share of the property.[16]

There are however two different systems of equal distribution between the children; the first being *idi-igi*, in which an equal portion is attributed to each wife and equally distributed amongst her children. This operates where a deceased intestate is married to more than one wife because it is reasoned that each wife constitutes a branch of the man's family on the issue of succession and each must be treated fairly. The second system is the *ori-ojori*, in which the devolution is per capita which means that each child gets an equal share.[17] The wife has no right either to inherit or administer the property as she is considered as part of the chattel of the estate. The court in the case of *Iwelo Awero v Raimi Sadipe*[18] states that a widow without issue is part of the property and liable to be inherited with the other property of the husband.

Women's Right to Inheritance in Igbo Land

Members of the Igbo (also known as Ibo) ethnic group mainly live in the southeastern part of Nigeria and constitute 18% of the country's over one hundred and thirty-one million population. The Igbo rites classify property into 3 categories; land, commercially valuable trees and plants, and movable property (household articles, livestock, money and debts).[19] For instance although many local variations exist, the inheritance of individually owned land generally follows the principle of primogeniture.

In the Igbo traditional communities, the wives and daughters do not have rights of inheritance over their father's/husband's property; the eldest son has the absolute rights to inherit property.[20] However, women are excluded, she has no right of ownership over any property of her deceased husband and this applies to the daughters of the deceased as well. Rather the widow has mere right of possessing a parcel of family property subject to *her good behavior* whether she has a surviving son or not.

In Igbo customary law, two modes of distribution of intestate estate are recognized *per stirpes* and *per capita*. Distribution *per stirpes* usually takes place in polygamous families. The estate in such a case is distributed as many shares as there are wives that have sons in them ~*Usoekwu*. In the case of distribution *per capita*, the estate is distributed among the individual sons. In some areas for instance; Abakaliki, Aguata, Anambra, Nsukka (Anambra state) Aba, Afikpo, Arochukwu, Okigwe and Nkwerre (Imo state) distribution wherever there is more than one wife is done *per stirpes*.

On the other hand, in areas like Mbaise and Oru (Imo state) Njikoka, Udi, Uzo-uwani (Anambra state) and Ukwu (rivers state) distribution is *per capita* irrespective of whether the family is a monogamous or polygamous one. In yet other areas, whether the distribution is *per stirpes* or *per capita* will depend on the nature of the property which makes up the estate. In Onitsha, for instance, the distribution of real estate is done *per stirpes*, while the distribution of movable property is done *per capita*.

Female children in Igbo land have suffered so much neglect and exclusion from being involved in their family inheritance due to their cultural beliefs and tradition which invariably positions the women as temporary children. In Igbo land, they are subconsciously seen and treated as less important to the family, yet when serious needs arise in the family they are looked upon for solution. The reason being that male children perpetuate their father's generation, unlike the woman who gets married and bears her husband's name. Also, a female child has no hope from inheriting from her father's property and as such she must get married.

There are some localities in which a daughter with respect to whom a *nrachi ceremony* is performed (a practice in which the female child of a man who does not have male issue is prevented from marrying so that she can bear male children in her father's name and may inherit her father's compound land and house). Similar to the inheritance of individual land, the inheritance of investment on land (including trees with commercial value) also varies from one locality to another. Although such property is generally inherited by sons as corporate bodies, there are localities where they are jointly inherited.

Where distribution is done per capita, the heirs take their respective shares in order of seniority so that the eldest son has the right to take before the others. In the case of distribution per stirpes, the respective ~*Usoekwu* with the eldest son will take first. The share of each *Usoekwu* is received by the eldest son in that unit on behalf of himself and his brothers. Within each *Usoekwu* there is sub distribution among male members. A variation of distribution *per stirpes* is found around Ogbaru (Anambra state) where the various *Usoekwu* with sons in them take in the order in which their respective mothers were married into the family irrespective of the comparative seniority of the sons in each ~*Usoekwu*.

There is no general rule in the Igbo customary law that the successors take equal shares. In some part of Igbo land including Aguata, Igbo-Eze, Ogbaru, Onitsha (Anambra state); Arochukwu, Bende, Mbaise, Owerri (Imo state) besides the special shares of the senior son already mentioned, the heirs are entitled to equal sharers of the deceased's lands and houses. On the other hand, distribution in unequal shares will progressively get smaller with the eldest son taking the largest shares operates in Aba, Mbano, Nkwerre, Northern Ngwa, Oguta (Imo state) and Abakaliki, Nnewi, Ezzikwo (Anambra state).

As a general rule, a widow under Igbo customary law, is not entitled as of right to succeed to the personal or real estate of her deceased husband. This principle was applied in the Supreme Court case of *Nezianya v Okagbue*.^[21] In the court of first instance, it was held that the possession of a widow of her husband's land cannot adverse to the rights of her husband's family to enable her to acquire an absolute right to possession of it against the family. The plaintiffs then appealed. In the opinion of the Supreme court one of the important issues to be determined was whether under Onitsha native law and custom, a wife of a deceased member of a family could become the owner of her late husband's real estate by virtue of long possession of the property which she occupied with the knowledge of the family or by adverse possession. The court gave a negative answer to this question and observed that;

“it will appear that the essence of position of a wife in such a case is that she occupies the property or deals with it as a recognized member of her husband's family and not as a stranger; nor does she need the express consent or the permission to occupy the property so long as the family makes no objection to her occupation; from the evidence it is abundantly clear that a married woman after the death of her husband can never under native law and custom be a stranger to her deceased husband's property; and she could not at any time, acquire a distinct possession of her own to oust the family's right of ownership over the property.”

The female child deprived from even partaking from her husband's estates in the event of his death, if she has no male child or that her children are still young. This could be worsened by the activities of the shylock relatives who would want to take undue advantage of the situation and have everything to themselves. In some cases, the husband's family arranges and marries a younger lady for the man in order to have male children and the first wife, who is actually relegated to the background and eventually pushed out of the house if a male child comes from the other woman.

In spite of this seemingly dark side of the Igbo culture, women are expected to stay in their husbands' house no matter the form of maltreatment meted to them by their husbands, mother in law and relatives. This is because they, as women, do not have a place in their fathers' houses. This has often brought sufferings to the women, especially the uneducated ones. There are cases where Igbo women end up on the streets begging or spending the rest of their lives in strange lands because they cannot go back to their fathers' house after being sent out of their husbands' houses. Now, Igbo women take up career jobs, live independently and acquire landed property.

The Onitsha native law and custom postulates that a married woman, on the death of her husband without a male issue, with the concurrence of her husband's family, may deal with the deceased property. Her dealings must receive the consent of the family. The consent may be actual or implied from the circumstances of the case, but she cannot assume ownership of the property or alienate it. She cannot by effusion of time claim the property to be her own. If the family does not give her consent, she cannot deal with the property. She has a right to occupy the building or a part of it, *“subject to good behavior”*. This statement of the law is true of most other Igbo speaking areas. Also, in *Ejiamike v Ejiamike*^[22], Oputa J. held that a widow of a deceased person had no right under Onitsha customary law to administer the estate of her late husband.

Although a widow does not inherit her husband's estate, she is entitled to some rights therein, first, she is entitled to live as a member of the family in her late husband's house until she re-marries or dies. In order to protect this right, the husband's heir has no power to dispose of the matrimonial home which is occupied by the widow. However, her right in this respect is subject to good conduct. Secondly, a widow has the right to be shown a portion of her late husband's land or family land annually for farming purpose according to her farming needs. Thirdly, a widow while living on the husband's family has a right to be maintained by the person who inherits her husband's estate. Where, however, the widow's son is grown up, she would be maintained by him. A widow without a son has no right to remain in late husband's family. The husband's heir may in fact expel her from the husband's compound and other lands.

Unfortunately, the duty of the male heir to maintain the widow is neglected with the result that the male heir takes the benefits without the burden. This may be hard on the widow where she has contributed significantly to the acquisition of the property in question. It has been the case in some cases. Widows are left destitute in spite of the fact that their husband left substantial estate behind which by the customary law is to be inherited by another male which is not her son.

Women's Right to Inheritance in Hausa Land.

The North East custom of inheritance covers most parts of the North, basically the Hausa and Fulani's and others. The Hausa customary law is influenced largely by the Islamic law under the Sharia system which is both religious as well as a way of life. Before the advent of Islam, young males and females are not entitled to inherit from their deceased fathers' estate as was said in *Mohammedu v Mohammed*.^[23] The rationale was that since young sons and daughters cannot go to war and secure bodies or loot (Gamima), they should not be allowed to inherit their heirs. By the original Hausa native custom, the females were, themselves object of inheritance.

Only adult sons and brothers were entitled to inherit. Female can inherit the moveable property of their mothers. Interestingly, land whether owned by females or males can only be inherited by the males within a family. Although under the Sharia system the notion of Qawama^[24] is interpreted to mean that men as a group are the guardians of and are superior to the women as a group. That notwithstanding, the Sharia affords women whether as daughters or wives the right to inheritance; Making it the only custom that guarantees such rights.

Among the Hausa, inheritance or succession is normally determined by the customary rules the deceased person lived by during his lifetime. If the deceased were a Muslim during his lifetime, the rules of succession most likely to govern the distribution of his estate would be as prescribed by the Islam law, Sharia. If otherwise he is not a Muslim, the customary law principles of his indigeneship would apply. Generally, among the Hausa, the eldest son inherits his

deceased father's cattle, the main asset in those days, out of which he makes presents of some to his younger brothers according to their needs.

For Hausa communities which are not subject to Islamic law, the common practiced system of succession is through the rule of primogeniture. Only the father has the right to deprive the eldest son of his right by a valid direction made with the aim of ensuring that the affairs of the family are properly managed by a person qualified on grounds of intelligence and qualification. In the absence of such direction the right of the eldest son cannot be taken away without his consent.[\[25\]](#)

In the Gbagyi (Gwari) group which are found in four state, namely plateau, Niger, Kwara, and Kaduna states, the modes of distribution is different. Land is inherited patrilineal in the following order: eldest son, eldest brother, father of the deceased man. If all three are dead, the land reverts to the lineage head for disposal, while the value crops go to the deceased man's mother or his eldest widow. Personal property is divided among the deceased sons and daughters in the proportion of two to one (2:1). Where there is no child, estate is administered by the Alkali who pays an eighth (1/8) of the value to the widow.[\[26\]](#)

In the Jerawa (Afusere) group centered in Jos, plateau state. The wife of the deceased is inherited by his brothers but the widow is free to marry anyone else, where she is required to repay her bride wealth unless she has a sufficient number of children to obviate the requirement. Land is communally owned and there is no right to alienate land. Where a man dies, the eldest son normally inherits his father's right, authority and responsibilities. In the Jube native law in Kaduna state, women are allowed to inherit where there are no male heirs. In other societies and tribes in Hausa land, the absence of male heirs means that the land would revert to the community where the deceased belonged when he was alive. In some customs, female heirs have exclusive right to the fruits of the economic trees on the farmlands e.g. locust beans and baobab trees.[\[27\]](#)

The inheritance rights of widows and divorcees are precarious and dependent on the benevolence of the family head. The situation of widows is determined by their willingness to remarry within the family and their fertility. If she obliges, the woman is allowed usage of her portion of the land allocated to her and to stay in her hut. If she opts not to marry but stay as family member and look after her children, she has the access to both her hut or room and the land, and she could go on farming to take care of the children. If she marries out of the husband's family, she loses all the rights and success she was entitled to. Childless widows on the other hand, are expected to return to their ancestral home on the death of their husbands.

Novel Development

A widow of a customary law marriage, on the death of her husband is completely disinherited under the various customary laws in Nigeria. No system of customary law in Nigeria confers a beneficial right in a widow in the deceased husband's estate, except indirect benefits through her children's right, if any. This is all the more so apparent given that the widow is property to be inherited.

However, some customary laws are getting reformed. It is interesting to note that in recent times, the court have departed from the rule of customary law that a widow cannot inherit the estate of her deceased husband's property. Circumspectly, in *Loye v Loye*,[\[28\]](#) the court drew attention to modern socio-economic changes in the relationship of husband and wife and held that the practice of disinheritance of widows is capable of working great hardship in modern times especially when wives make significant contributions to the wealth and properties of her husband. The reformation of the unfavorable customary laws of women inheritance in the Igbo land, for instance, is evident in the recent case of *Ukeje v Ukeje*.[\[29\]](#) The Supreme Court has voided the Igbo law and custom which forbids a female from inheriting her late father's estate on the grounds that it is discriminatory and conflicts with the provision of the constitution. The court held that the practice conflicted with *section 42(1) (a) and (2) of the 1999 constitution*.[\[30\]](#) The trial court found out that she was a daughter to the deceased and that she was qualified to benefit from the estate of her father who died intestate in Lagos in 1981. The Court of Appeal, Lagos, to which Mrs. Lois ukeje and Enyinnanya Ukeje appealed, upheld the decision of the trial court, prompting them to appeal to the Supreme Court. In its last judgment, the Supreme Court held that the Court of Appeal, Lagos, was right to have voided the Igbo's law and custom that disinherit female children. *Justice Bode Rhodes-Vivour*, who read the leading judgment, held that no matter the circumstances of the birth of a female child, such a child is entitled to the inheritance from her late father's estate. Consequently, 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 right provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with *section 42(1) and (2) of the constitution*. In the light of all that has been said, the appeal was dismissed. Also, in *Nzekwu v Nzekwu*,[\[31\]](#) the Supreme Court held that under the Onitsha custom, the widow is entitled to certain rights in respect of her late husband's estate property even where she is childless.

A recent landmark decision of the supreme court on the inheritance right of widows with respect to their deceased husband's estate is *Anekwe v Nweke*,[\[32\]](#) where the Supreme Court condemned such culture in very strong terms; *“any culture that disinherits a wife from her husband's property by reason of God instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure for a widow of a man to be thrown out of her matrimonial home by her late husband's brothers on the ground that she had no male child, is indeed barbaric, worrying and flesh skinning. It is repugnant to natural justice, equity and good conscience and ought to be abolished.”* The decision of the Supreme Court in this case is laudable and has put an end to such ancient and archaic practice and turn advanced the customary law of intestacy.

In Northern Nigeria which is dominated by Muslim and controlled by Islamic law, the widows can acquire and retain their own property under the Sharia law; they can pass it to their heirs, and can inherit from their deceased parents, husbands, sisters, brothers as well. Under the penal Code of the Sharia law, the female receives the half as much as the male heirs, the widows have the right to one quarter of the estate if the deceased has no descendants and one-eighth if

there are heirs. If there is more than one widow, the one-eighth will be shared between them.[33]

Also, in the Yoruba land, the extinct rules allow women to inherit in consonance with the males as stated in *Sule v Ajisegiri*[34] where it was held that the partition must be equal between those entitled regardless of sex whether male or female, thus the defendant's claim that, being male, he was entitled to a larger share was rejected.

The *1978 land Use Act of Nigeria* established a state-owned land system that allowed similar opportunities for man and woman to acquire or inherit land. However, only legally married women could benefit from this act, so it did not necessarily improve the ownership of inheritance right for women in Nigeria. Transfer of land ownership is still largely guided by customary practices that discriminate against women, especially because the average citizen has poor knowledge of the statutory laws with respect to land.

Conclusion and Recommendation

The discriminatory aspects of property inheritance under the customary law in Nigeria manifests in different forms and scope such as primogeniture rules, Islamic law rules, discrimination against female children, female spouses, illegitimate children and children other than firstborn son. It is important to note that the provisions of the constitution are sacrosanct and inviolable because of its supremacy to all other laws of the land. Thus, any native law or custom inconsistent with the provisions of the constitution is null and void to the extent of its inconsistency. The constitution reflects the ideal of the state to protect, preserve and promote Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in the constitution. Also, the constitution provides that every citizen shall have equality of rights, obligations and opportunities before the law, of all provisions of the Nigerian constitution; *Section 42* plays a crucial role in the formulation and application of the rules of intestate succession under customary law. This section has a lot to do with inheritance and family practices because it is in such area that discrimination finds the highest expression at customary law.[35] The provision of *Section 42*[36] forms the fundamental premise for the protection of Nigerians from discriminatory and repugnant customary rules of inheritance.

The associated issue of dispossessing a widow of her husband's property by his relatives has been dealt with in some state laws such as *Section 4(2) Enugu State Prohibition of Infringement of a Widow And Widower's Fundamental Right Law 2001* provides that; "subject to the Marriage Act, Wills Law, Administration of Estate Law, or indeed any Customary Law (not repugnant to natural justice, equity and good conscience), a widow/widower shall not be dispossessed upon the death of the husband or wife of any property acquired by the deceased husband or wife(during the deceased wife's lifetime without his or her consent).".

However, it is one thing to have these rights written down in the constitution and another thing to have then executed and enforced. In *Anekwe v Nweke*[37] the judgment did not address the position of widows and younger male children. Once again, no *amicus curiae* were involved and no attempt was made to refine the rather inelegantly-drafted claims of the parties. It is noticeable that the Supreme Court did not clarify the territorial reach of its decisions in these two judgments. This is understandable, given that the common law rules of pleadings discourage courts from granting prayers not asked by the parties. Unfortunately, lower courts are only bound by the decisions of higher courts when the facts are the same as the previous facts sought to be relied on. Moreover, the court made no effort to analyze the changing social conditions that affect the primogeniture rule, nor did it mention the duty of care owed by family heads, nor even made a case for reform of the customary law of succession.

Therefore, although these rights are inconsistent with the constitution and are null and void according to *Section (1) (3)* of the constitution, they are still in force in certain communities in the country. Only women who know their rights will seek redress in the courts of law for such rights to be abolished and duly enforced in their communities.

Sequel to the issues for determination, this paper seeks to recommend the following;

- That the Nigerian laws, particularly those dealing with succession and inheritances are urgently amended and updated to meet up with acceptable practices around the world.
- That awareness and literacy campaign should be carried out for persons who are aggrieved and they should seek for the enforcement of their fundamental human rights as it is guaranteed under the constitution of the federal republic of Nigeria 1999 (as amended).
- State legislations should be encouraged to make laws, which states categorically that discrimination based on sex is prohibited.
- It should also be noted that courts should be proactive in handling customs that are repugnant to natural justice, equity and good conscience as it is termed "the last hope of the reasonable man".

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[9] *Cole v Cole* (1898) 1 NLR 15, where the court stated that the form of marriage determines the mode of succession.

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[11] (1957) 2 FSC 33.

[12] (1952) 20 NLR 46.

[13] (1997) 2 NWLR 486 at 144.

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[15] (1939) 15 NLR 31.

[16] *Oloko v Giwa* (1939) 15 NLR 31

[17] *Taiwo v lawani* (1961) ANLR 733.

[18] (1983) 11 O.Y.S.H.C. 790.

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[20] *Ejiamike v Ejiamike* (1972) 2 ENLR p.11.

[21] (1963) 1 ALL N.L.R. 352

[22] (1972) 2 ENLR p.11.

[23] (2002) NWLR (Pt 709) p. 104.

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[30] 1999 Constitution of the Federal Republic of Nigeria (as amended).

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[32] (2013) LPELR 20386 (CA).

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