



Graduate School of Development Studies

**Widowhood Practices and the Rights of Women:  
The Case of South-Western Nigeria**

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## List of Acronyms

ACHPR	: African Charter of Human and People’s Rights
CEDAW	: Convention on the Elimination of All Forms of Violence Against Women
FGN	: Federal Government of Nigeria
HRBA	: Human Rights-Based Approach(es)
ICESCR	: International Covenant on Economic, Social and Cultural Rights
INGOs	: International Non-Governmental Organizations
MA	: Master of Arts
MDGs	: Millennium Development Goals
NGOs	: Non-Governmental Organizations
UDHR	: Universal Declaration of Human Rights
UN	: United Nations
WACOL	: Women Aid Collective

# Dedications

This writing is dedicated:

To Almighty God.

To my LATE brother, Samson Mayowa Afolayan (1982-2011), LATE sister, Ruth Tope Afolayan (1980-2006) and my LATE father, Pastor Folorunso Ezekiel Afolayan (1940-1999). I am sad all of you did not live to see respectively your brother and son progressing. It would have given you great joy.

## **Abstract**

This research examines the widowhood practices and rights of women in South-Western Nigeria and discusses how the widows can be protected through the localization of human rights terms. The context, causes and impact of the widowhood rituals, in relation to how the traditional practice infringes on the rights of Yoruba widows are central concerns of this research. In addition to this, debates on common and challenging elements that are intimately linked to Yoruba widowhood practices are conceptually and analytically mapped-out, in light of prevailing customary law, national legislation and international human rights laws. Regarding the conceptual frameworks and approaches used, the study explores gender relations, gender-based violence, legal pluralism and human right-based approaches, using CEDAW and the Protocol to the African Charter of Human and People's Rights. It is conceived as a desk study on secondary data. Through informal interviews, literature study and using my personal experience and knowledge of the widowhood practices since 1999, valued analysis was carried out. The findings of the study reveal contradictions and uncertainties about the connection between traditional widowhood rituals and pluralism issues which are deeply rooted in unequal power relations, religion, socio-cultural, and legal elements germane to South-Western Nigeria. These factors subject widows to hybrid discriminatory customary practices which have severe implications on their existence and amount to infringement of their fundamental human rights as enshrined in the 1999 Constitution of the Federal Republic of Nigeria, treaties and other international legal instruments. In reality, translating human rights ideas in locally-relevant terms, possibly results in a new dimension for women's freedom. But implementing human right ideas in the Yoruba contest still has a long way to go. Some of the fears and doubts among relativists, Universalists and legal pluralist scholars are still reinforcing the controversies connected to the applicability of human rights ideas in local terms and these tensions are social headaches for reconciliation in this debate. I argue that, as much as civilization, urbanization and a few other factors influence the widowhood practices, reconciling the tension through vernacularizing universal values of human right in the local social con-

text in Yorubaland perhaps is possible. However, its success will not be spontaneous. While I believe there is more to do on widowhood practices in South-West Nigeria, I propose a number of recommendations to strengthen the discourse on the rights of widows in future.

## **Relevance to Development Studies**

The present research contributes to the recognition of human rights as essential for development. This recognition is mutually reinforcing and enhances promotion of women's human rights which are important for the development agenda. The battle against traditional practices harmful to women forms part of a global struggle against violence against women in the private sphere, and calls for gender equity and development. The study focused on the plight of widows in South-West Nigeria which explicitly implicates the crucial roles that institutional, public and private actors (national and international) have to play in taking bold steps in the quest for development. Focusing on the rights of widows has a significant influence on the development of social welfare, and the legal and political position of widows in Nigeria. It also addresses the feminization of rural underdevelopment, the invisibility of women within the international economic system, and the secondary position allotted to economic and social rights in the human rights regime which are all part of development indices relevant to achieving the Millennium Development Goals. In light of this, the study clearly is relevant to development studies.

## **Keywords**

Widowhood rites, women's human rights, Gender relations, Gender-Based Violence, Customary law, South-West Nigeria (Yorubaland)

# Chapter 1

## Introduction

### 1.1 Introduction

Across African societies, women continue to struggle for gender equality and women's rights issues. In support of the women's rights' struggle, several human rights instruments such as CEDAW, the UDHR, the ICESCR, the African Charter on Human and People's Rights, and national Constitutions made deserving headway (Wanitzek, 2008: 34, Merry, 2006: 2). However, overall still not much attention is devoted to widowed women in Africa. Particularly the way in which widowhood rites undermine the rights of women in South-Western Nigeria, where this research focuses on requires attention.

This research describes how widowhood rites in Yorubaland are practiced, and also examines the reasons that underlie the persistence of these practices and the way the rites undermine the rights of women in spite of the prevalence of human rights law with respect to discrimination, inhumane treatment and deprivation of social and economic rights. It also describes how gender emerges from the social processes that result in the harmful traditional practices in South-Western Nigeria. The Yorubaland that this paper examines differs slightly in terms of the way widowhood rites are practised but it has some similarities with other geo-political zones in Nigeria too. It explores the women's human rights in the context of international law and national legislations, and legal pluralism. Further, it develops a Human Rights-Based Approach (HRBA) to widowhood practices in Nigeria, using CEDAW and the Maputo Protocol.

This chapter presents the problem statement, relevance, justification and objectives of the research, research questions, background, research methodology, methods and sources of data and structure of the paper.

### 1.2 Problem Statement

Debates on how to reconcile the conflict between human rights and harmful cultural practices have been evolving in the world for the last two decades

(UN, 2001: 8; Sossou, 2002: 201, De Gaay Fortman, 2011: 122,123). In the face of the massive support for numerous international human right instruments that seek to combat all forms of discrimination and harmful traditional practices against women, practices such as widowhood rites are still persisting. By implication, cultural values tend to undermine the prospect of women's rights. In the case of widowhood rites, these are mainly privately perpetrated on the ground of communal membership. Yoruba membership revolves around maintenance of cultural and religious traditions. Across these wide-ranging traditions, widows are subjected to patriarchal customary and religious laws and face problem of inheritance rights (Merry, 2003: 946; Iwobi, 2008: 39, Ewelukwa 2002: 469).

The underlying motivations for widowhood rites are linked to cultural belief and local cosmology that the widow is a prime suspect of her spouse's death and that the widow would therefore need to prove her innocence to the family through these rituals. Another widowhood practice is that of levirate marriage where a sibling of the deceased husband re-marries the widow in order to maintain paternity for the widow's children. But educational attainment, children's approval, financial independence and religious beliefs of widows in Nigeria determine the acceptance of levirate marriage. Still, a number of widows condone these practices and seem complacent because any attempt of non-compliance can perhaps claim their lives or that of their children (UN, 2001: 11, 12). Even in the public sphere, institutions and community norms condone the practices. This makes the rites hardly debated publicly.

The travails of widows in Yorubaland include a long period of incarceration during mourning, an obligatory poor standard of hygiene, deprivation of the husband's property and maltreatment by his relatives, enforcement of persistent wailing and sitting beside the husband's corpse. These directly have negative psychological, financial, sexual and social impacts on widows. In the past, the pattern of reciprocity and obligatory duties for widowhood in "an extended family protected the widow and her children" (Owen, 1998: 3). Nowadays, widowhood rites often make women to be dethroned, defaced, disentangled, defiled, denied, deprived, dispossessed and disinherited (Iwobi, 2008; 52-57; Nwadinobi, 2001). The enormous discrimination and humiliating treat-

ments that widows frequently encounter, in varying degrees of hardships, is a threat to the rights of women (widows) as recognized in international human rights conventions and treaties and in national legislation as well.

Tensions existing between cultural practices and universal respect for women's rights can, and must, be managed or proactively resolved (Ado, 2010: 601, 610). In applying and realizing these human rights norms in a particular economic, historical, social, political and cultural setting, context remains important (Arts, 2010: 10, De Gaay Fortman, 2011: 123). These tensions, between universalist and relativist positions, have been qualified as a 'trench war' by Viane and Brems (as referred to in Arts, 2010: 10). In the extreme, they resulted in a situation in which certain groups of women, specifically widows, are not adequately protected against harmful widowhood practices and have not been given the attention they deserve, as is the case across Nigeria.

Similarly, Nigeria as a multicultural society is characterised by a plural legal system to preserve the traditional values of her diverse ethnic communities. The frontiers of the legal systems (Common Law, Statutory Law, Customary Law and Islamic Law) are multi-faceted and the customary law itself is not integrated. Generally, the mystifying plurality of cultures in Nigeria indicates that there is a wide variety of widowhood practices. There are significant variances between the different sub-cultures that are found within the Yoruba ethnic group. These are possible because of various influences ranging from social contacts with their neighbours as well as western influence or other reasons. This multiplicity complicates the applicability of the legal systems and widows are the casualty of these complexities. Nigeria's legal system is gradually willing to confront these customary laws and traditions with a view to curtailing the operation and adverse effect though; reconciling them with the provisions of the Nigerian Constitution is challenging (Iwobi, 2008: 79, 80)

Apparently, looking at widowhood practices in Yoruba land, the women involved do not have much choice if they are to live in peace with the communities. Otherwise they will be socially labelled. The traditional structure, male-dominance mentality and the ethnic groups are problems confronting widows. Many of them rely on the work of their hands and live alone (and in isolation). Access to their deceased spouse's land properties and other assets are practical-

ly an illusion and they experience cat-and-dog's dealings with their in-laws. Worse still, the complex interaction of the pluralistic legal structure in Nigeria, which simultaneously functions alongside with cultural traditions, gender and religion, affects the status of women particularly in the widowhood period (Bazar, 2009: 176)

Efforts to strike a balance between rights of widows and customary law have been manipulated by fragmentation and discrimination. The federal level has been challenged to initiate constitutional amendments. Besides, limited law-making measures were taken by Yoruba state governments in an effort to address the discriminatory treatments experienced by widows. In view of this, this research demonstrates how widowhood practices have infringed on the rights of Yoruba women and why efforts to discontinue such practices have proven futile. This is purposely examined to ascertain how widows in South-Western Nigeria can be protected from harmful traditional rituals.

### **1.3 Objective of the Research**

The primary objective for this research is as follows:

To examine how Yoruba widows in South-Western Nigeria can be protected from widowhood rites in light of prevailing human rights law.

The research on the Yoruba women and by extension, the Nigerian widow, is an attempt to draw attention to the travails of widows. Understanding widowhood rites, the plight of widows in Yoruba land and the implications of the rites to the rights of widows will help us to understand the present circumstances and then give direction for the future of Nigerian widows. The focus on widowhood rites in Yorubaland has only been a negative one with questions directly interrogating the welfare of widows during the rituals and post-widowhood rites. The Yoruba widows' experiences have a number of unthinkable phases. However, the reality is that many of them had nothing to do with their spouses' death. They are just sufferers, left with little or nothing as inheritance.

It is on this backdrop that this study draws attention to the fact that widowhood rites are intensely related with unequal structural relationships be-

tween women and men. The present research helps to throw light on what has largely been masked and deemed culturally acceptable in Yoruba community, in the absence of appropriate national legislation and human rights standards. Beyond this, this study looks at how Nigerian national legislation and her obligation as a duty-bearer in the venture of international human rights law seeks to protect Yoruba widows

The specific objectives of the research are:

1. To demonstrate that widowhood practices infringe on the rights of Yoruba women, by using South-Western Nigeria as a case study.
2. To determine how far Nigerian domestic legislation and other government interventions have gone in harmonizing legal frameworks pertaining to widows and widowhood practices with international and regional human rights norms.
3. To generate recommendations for legislation and policy interventions to improve the status of the widows in South-Western Nigeria.

## **1.4 Research Questions**

The central question is: How have widowhood practices in South-Western Nigeria infringed on the rights of women and why have efforts to discontinue such practices failed?

Around the main question, the following sub-questions arise:

1. What tensions with human rights law arise from contradicting approaches to the rights of Yoruba women in the Nigerian Constitution, customary law, and international human rights laws?
2. Do widowhood rites amount to infringements of women's rights?
3. How has Nigerian national legislation, in light of Nigeria's obligations as a duty-bearer in international human rights law, given effect to human rights instruments that seek to protect the rights of widows?
4. What efforts have been made to translate the universal rights of widows in South-Western Nigeria into local reality?

5. What recommendations can be made for legislative and policy interventions?

## **1.5 Background**

Nigeria is located in the West Africa and has more than 150 million inhabitants as at 2010. It is a country that is multicultural in terms of the ethnicity, religion, language and so on. Nigeria is a Federal Republic which has more than 250 ethnic groups but the major ethnic groups are Hausa-Fulani, Igbo and Yoruba. The major religions in Nigeria are Islam, Christianity and indigenous beliefs. The major languages in Nigeria are English (official), Hausa, Igbo, and Yoruba (US department of state, 2011). South-Western Nigeria consists of Yoruba people and they happen to be a very well-researched ethnic group in West Africa. There are also indigenous Yoruba communities in Benin, Togo, and some groups of Yoruba migrants in the USA, UK, Brazil, and Cuba. Yoruba people are bounded with shared cultural values and spirituality. Currently, there are six states (Ekiti, Oyo, Ondo, Osun, Lagos and Ogun) in South-Western Nigeria which are predominantly dominated by Yoruba people. Till today, many of the traditional beliefs and practices are consciously and unconsciously upheld by a significant proportion of Yorubas.

Map 1.1: Map of Nigeria



Source: <http://www.mapsofworld.com/nigeria-political-map.html>

## 1.6 Research Methodology and Methods

This research was conceived as a desk study largely based on secondary data. Gender was conceptually framed to unpack the gender relations between men and women and violence against women in Yorubaland. A Human Rights-Based Approach (HRBA), a framework for generating comprehensive information about women's rights, was adapted to the focus of the study, using CEDAW and the Protocol to the African Charter of Human and People's Rights. They were used as strategic tools for analysing the relevance of human rights-based approaches in responding to the problems in the sphere of women's rights and protection of widows in South-Western Nigeria.

This paper relied extensively on secondary data, although my personal experience and knowledge of widowhood rites are additional sources for this research. Therefore, any unreferenced attestation in relation to the factual situation in this research is based on my personal experiences and direct observations.

To include the voices of the widowed women, I used a documentary titled "Till Death Do Us Part" (1998), making reference to widows in Nigeria that were interviewed about the context and the effect of the rites on them. I also made reference to a UN publication (division for the advancement of women) on "widowhood: invisible women secluded or excluded" published in 2001. My reference to the documentary and UN publication was made in order to clarify how widowhood rites are contextualized in Nigerian domains and what problems they face in the course of undergoing these rituals. I also had informal interviews with two widows in Ogun State. I was fortunate to have the support of my pastor to find these widows in one of the branches of a particular church in a particular town, in Ogun State (name of the town is withheld). My Pastor organised an informal environment (inside the church premises) for me to conduct the interviews for the two widows. They were willing to talk to me about this sensitive topic (based on what they had experienced) through the concerted help and support of my pastor. Moreover, analysis of Nigerian customary law was combined with literature research. This prominently captured material relevant to the widowhood rites as practised in South-Western Nigeria

and how the rites undermine the rights of women in spite of the prevailing international legal instruments and national law.

### **1.6.1 Sources of Data**

Primary data were drawn from the following instruments, the Nigerian Constitution, the Universal Declaration of Human Rights, and International instruments such as CEDAW as well as regional instruments such as the African Charter on Human and People's Rights (ACHPR). Also, secondary data were drawn from the relevant reports produced by various organizations such as United Nations, and other relevant literature on widowhood practices and women's rights in government publications, legislation, Nigeria's Bill of Rights, and publications from activists or from the researchers who pay attention to the widowhood-related topics were used. I also had informal interviews with two widows in Ogun State, aged 35 and 42 respectively. Both widows are educated but the interview was conducted in Yoruba language.

### **1.7 Scope, Limitation and Challenges of the Research**

As much as I would have wanted to strengthen the validity of my argument in this study with enough references, it was very difficult to obtain this from secondary sources or from empirical data. Concerted efforts were made by the researcher to get relevant additional data and information from NGOs and practitioners that are working in the specific area of widowhood practices in Nigeria. This proved very difficult though, because of the on-going social unrest in Nigeria and a general lack of disclosure of information on widowhood rites in Yorubaland. Notwithstanding these issues, a pool of information available was used, as well as resources found at the Africa Study Centre of Leiden University, the Netherlands and other relevant human rights reports.

Conducting this kind of research is quite challenging. The sensitivity of the widowhood rites in terms of emblematic cultural perceptions, diabolical fears and superstitions in Yoruba communities (*e.g. Eru Iku awoku tabi ise le obun bu-buru*; meaning fear of massive deaths or bad occurrences) have made it difficult

for people to discuss it openly (in the public sphere). The intervention of my pastor made the informal interview conducted possible. Given the sensitive nature of the information they provided, I was not allowed to use any electronic devices to record the interview and I was told not to reveal their identities.

Also, I was not able to find ample academic literature on the Yoruba context of widowhood practices. This study therefore suffered from limited information and literature in relation to the widowhood practices and rights of Yoruba women. Nevertheless, I utilized some concrete cases, and circumstances that I know through own direct observation and other available literature to fulfil my objective. Thus, any unattributed assertions in relation to these practices should be regarded as based on my personal experiences.

This research project builds on my extensive, direct and personal experiences of traditional widowhood practices in Yoruba land, as one of my family members once was a victim. As a researcher, I used my position as an advocate of women's rights to my advantage as a way of getting audience from both state and non-state actors. It helped me to achieve what eventually motivated me to pursue my MA degree in development studies (with a specialization in Human Rights, Development and Social Justice), particularly to examine how Yoruba widows can be protected from widowhood rituals.

Indeed, it was quite challenging for me because there was little information on specific Yoruba widowhood rite in the literature due to the sensitive ritual servitude which makes it unsafe for the widows. Reflecting on the sensitivity of this research, the selection of Yoruba communities as a case study could be limited by some ethical dilemma, cultural/linguistic practices, subgroup characteristics (widows in different Yoruba communities) and the researcher's subjectivity. Nevertheless, the research is still somewhat accurate despite these shortcomings.

## **1.8 Structure of the Paper**

This paper is structured as follows: Chapter 2 starts by exploring debates on conceptual discourses on gender, gender-based violence, women's human rights norms and legal pluralism in relation to the interpretation of harmful

traditional practices and the rights of widows. Chapter 3 discusses the context, causes and effects of widowhood rites in South-Western Nigeria. It further outlines the widowhood practices in Nigeria in terms of their historical and cultural antecedents. Chapter 4 starts by analysing the widowhood practices as a human rights violation using the conceptualizations in Chapter 2 to explain their implications on the plight of Yoruba widows. Chapter 5 explains how vernacularisation of human rights ideas could work to resolve the plights of Yoruba widows at the local level. Finally, Chapter 6 returns to the central questions and identifies the main findings of the research, and ends with five recommendations.

## **Chapter 2**

### **DEBATING GENDER, GENDER-BASED VIOLENCE, WOMEN'S HUMAN RIGHTS NORMS AND LEGAL PLURALISM**

#### **2.1. Introduction**

This chapter will present a conceptual debate about gender relations so as to help understand the social processes that give rise to the discriminatory widowhood practices. Further, the rituals are framed as a form of gender-based violence in term of interpretation and practices. The debate also focuses on whether universal women's human rights are compatible with culture as well as customary practices or not, in relation to the argument for the stance against widowhood practices. To have a deeper understanding of the discourse on widowhood practices and the rights of widows, this paper examines the legal pluralism over the authenticity of widowhood rites.

#### **2.2. Understanding Gender and Gender Relations**

Gender rather than sex is described as “those characteristics of men and women that are socially constructed”; whereas sex is described as biologically determined characteristics (Vlassoff and Moreno, 2002:1713). Therefore, this paper focuses on gender rather than on sex because I am concerned with the social roles and interactions of men and women rather than their biological make-ups. Gender relations have to do with social relations between women and men. Social relations between women and men are “learned, changeable over time and vary both within and between cultures” (ibid.). It is not only limited to interaction between individual men and women in terms of “personal relationships and biological reproduction” (Pearson, 1992:292). It covers all aspects of social, economic, political and cultural activities, including access to resources, remuneration for work, exercise of authority, power relation and participation in cultural and religious. Gender as a concept is important in establishing “people's behaviour and the outcome of any social interaction” (ibid.). Afonja (1986:122) gave analytical relevance to gender relations of men and women on the ground of gender equality, power relations and authority.

This means that gender formations and relations are based on the equality principle and not on the logic of domination and ideology of men as victimizers and women as victims.

The social meaning of life between male and female is being defined by gender relations together with what is considered appropriate behaviour or activity for men and women. This is why I also view gender as “having a social structure and related practices with a history that entails opportunities and constraints and a plethora of meanings, expectations, actions/behaviours, resources, identities and discourses that are fluid and shifting yet robust and persisting” (Martin, 2003: 344). What is considered as men’s or women’s work, attributes, behaviour and features varies between different societies and historical periods though. It becomes imperative to know that notions of gender identity (that is, what is fitting for men and women to do or be) have a strong ideological, religious and cultural content (Vlassoff et al. 2002: 1713; Pearson 1992: 294; Olajubu, 2008: 313).

To this end, one would see that some cultural beliefs and practices, including widowhood rituals, have seemingly survived in modern-day societies as a consequence of notions of gender and the ways by which men and women relate to each other in various communities. This debate will return in Chapter four. In addition, it becomes necessary to map-out how these traditional widowhood practices as a form of gender-based violence are important women’s right issues.

### **2.3. Gender-Based Violence— An Important Women’s Rights Issue**

Defining gender-based violence<sup>1</sup> as a women’s rights violation is not as easy as one might think because of the way the construct has expanded in the last two decades. Its original meaning—“men’s violence against their partners (women) in the form of assault, rape and murder” (Merry, 2006: 21) has greatly

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<sup>1</sup> While gender-based violence can also apply to men, this research only focuses on violence against women.

extended to other forms of violence which include female genital mutilation/cutting, violence against refugee women, sexual harassment, widowhood rituals and so on (see Cook, 1994a: 20, Keck and Sikkink, 1998). This concept also encompasses any conflicts which may arise between the rights of women and the injurious effect of particular traditional practices in both public and private life.

The Commission on the Status of Women developed the Declaration on the Elimination of Violence against Women in 1993 which defined gender-based violence as a violation of human rights and as an instance of sex discrimination and inequality (Connors, 1996: 27-28). The document further explains that gender-based violence is rooted in the unequal power relations existing between men and women in the past.

Gender-based violence is socially constructed and historically justified rather than natural (Coomaraswamy and Kios, 1999: 183). The 1995 Platform for Action of the Fourth World Conference on Women in Beijing explicitly defined violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual, coercion or arbitrary deprivation of liberty, whether occurring in public or private life” (Division for the Advancement of Women, 2000: 63; Merry, 2006: 76). Beyond this, it also took account of any act of gender-based violence dastardly perpetrated by the family, community or state, and leading to physical, sexual and psychological harm and suffering of women in both private and public life. The document reads, “Violence against women both violates and nullifies the enjoyment by women of their human rights and fundamental freedoms...” (Platform for Action, sec. D, 112, quoted in Merry, 2006: 23-24). By declaring the right of women (including widows) to protection from violence as an important international women’s right issue, the Beijing conference reaffirmed this intense statement of women’s rights as human rights.

Further, the discourse on women’s rights to protection from violence depicts the harmful nature of customary practices. Widowhood rituals are backed-up by cultural legitimacy, however, are interpreted as harmful to women. Gender-based violence is embedded in patriarchal traditions and culture (Coomaraswamy and Kios 1999: 190). These rituals critiqued as immoral tradi-

tional practices include mourning rituals and food taboos that are enforced on widows; and inevitably will expose them to economic hardships, confinement, and ill-treatments (Anugwom, 2011: 89; Samuel 2011: UN 2001: 2,3). The widowhood ritual is one of the central issues around which the conception of gender-based violence as well as harmful traditional practices has cleaved. The gender oppression and health hazards inherent in the widowhood rituals are justified by custom and culture and redefined as a violation of women's rights.

Surprisingly, however, some people do not label the rituals as harmful practices. Thus, positing culture as a flexible structure modifies the debate about women's rights and translating the terms into locally-relevant contexts<sup>2</sup>. Despite the fact that the conception of culture does not eliminate the tug of war and incredible complexity between rights concepts and cultural beliefs on gender-based violence around the world, the paper still focuses on the capability of social and communal settings to uphold the epitome of human rights and the essence of translating the global human right norms into local cultural terms.

From the conception of gender-based violence, it is clearly seen that the development of women's rights concerns as well as globally-developed strategies to protect widows from the scourge of traditional practices are based on a critique of male power within the purview of gender relations as previously discussed in section 2.2. This has been an important women's rights issue, especially in the global South as well as the global North in the last two decades. As we move on in this study, it becomes necessary to bear in mind the macro-context of legal frameworks within which these traditional widowhood practices operate. To do this, I look at the women's rights in the context of international human rights law and legal instruments in the next section.

## **2.4. Women's international Human Rights**

This section focuses on the women's rights in the context of the specific international legal instruments that are set forth to protect the women's rights.

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<sup>2</sup> I take this argument further in Chapter five

Women's rights are described as laid-down practices that are frequently the product of global movement to improve the status of women. The declarative ideology of women's rights underlies that as human beings, women have human rights. The corollary insistence on the rights of women and incorporation of their perspectives into human rights standards and norms forces recognition of the dismal failure of countries globally to accord women the human dignity and respect that they deserve. De Gaay (2006:36) noted that "each distinct human right has a core that relates to women's dignity and behind this core is a general principle connected with public justice in the sense of a communal conviction of what is so crucial for the integrity of the public-political community" that women's rights should be enforced.

Globally, it is also documented that women's rights are human rights. This was recognized by the global leaders in 1993 at the World Conference of Human Rights and reiterated by the international community in subsequent meetings held in Cairo, Copenhagen and Beijing respectively (Bunch and Frost, 2000). Most notable on their agenda were systematic discrimination and violence against women. Therefore, the following sub-sections will map-out specific international legal documents that are relevant to my case study.

#### **2.4.1 UN Charter and Universal Declaration of Human Rights (UDHR)**

The United Nations Charter<sup>3</sup> and the UDHR are the foremost documents from which all other global conventions draw inspiration. Article 1 of the UDHR "...equal in dignity and rights" refers to fundamental rights incorporated into the UN Charter. This implies that men and women are "endowed with reason and conscience and should act towards one another in a spirit of brotherhood" (de Gaay Fortman, 2011: 7). The overarching principles surrounding this are based on the tenets of legal protection, moral and political force. Strikingly, the functions and obligations of all the principal organs of the UN are set out in Article 8 of the UN Charter, which states "The United Nations shall place no restrictions on the eligibility of men and women to partici-

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<sup>3</sup> Signed on 26 June 1945 at the UN Conference on International Organization, San Francisco.

pate in any capacity and under conditions of equality in its principal and subsidiary organs”. Impeccably, the two Articles (1&8) expressly resonate the importance of the inherent dignity and worth of all human beings which guarantee the equality of sexes, non-discrimination on the ground of gender and freedom from inhuman treatment. Although I agree with de Gaay Fortman’s argument that realization of gender equality depends on “good governance, rule of law” (2011: 7) and the intensity of customary practices. Still, UN principles are based on the principles of equality between men and women without any form of discrimination or marginalization of women.

Furthermore, the UDHR embodies the rights of women in Article 2 where it states that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status....” The emphasis added on ‘sex’ stresses the gender sensitivity of the declaration. It indicates that there should no be distinction between how a widower and widow are treated. Thus, women’s rights are as important as any other rights.

Finally, Article 27 (1) focuses on individual’s rights regarding cultural practices. It states that “everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”. The implication of this article to my focus in this study is that, no one must be *forced* to participate in any traditional practice of his/her society. The choice to participate solely rests on the individual concerned.

#### **2.4.2 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

CEDAW addresses discrimination with due regard to women’s rights. It was adopted by the UN General Assembly on 18 December 1979 and it entered into force on 3 September 1981 (Human Rights Web, 2011). CEDAW guarantees equality and freedom from all forms of discrimination by the state and non-state actors in all areas of public and private life (Byrnes, 2002: 120). It largely contains the gender-specific and wide-ranging human rights instruments that have guarantees of freedom from discrimination based on sex; although it

includes some important fresh provisions too. States are obliged to ensure that women enjoy equality in the areas of civil, political, social, economic and cultural rights as required by the Convention. This makes CEDAW to be regarded as a remarkable stride; a clearly international legal instrument promoting the right of women to equality and non-discrimination as well as providing a framework or point of reference for policy-making, collective activism and lobbying. The CEDAW Convention explicitly deals with the issue of discrimination by defining what it means to discriminate. It covers both direct and indirect discrimination and the definition it provides, focuses on the *de jure* (enjoyment by women of equality) and *de facto* (situation: i.e. the extent to which women in practice enjoy those rights).

CEDAW Article 1 states that the term “discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status on the basis of equality of men and women, human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. As a corollary of this definition, this Article sets the framework for all state parties that have ratified it to domesticate the Convention into their various national legislations. Based on this Article, one can say that any traditional practice that has the propensity to impair a widow’s enjoyment of her human’s rights and freedoms will have to be reviewed.

Article 2 sets out the importance of the “principle of equality” and how state parties are bound in using “appropriate legislation and means” to realise this principle. These are guidelines by which State parties are obliged to respect, protect and fulfil. Article 3 and 18 of the CEDAW Convention clearly sheds more light on “legislation”, an important element to ensure realization of individual women’s human rights and freedoms on the ground of “equality with men”.

The country report by State parties is another significant aspect of the Convention because it allows the Committee to monitor and assess the performance of State parties in fulfilling their obligations as required by international Conventions [CEDAW Article 18 (1&2)]. In response to this report, the

Committee makes an appropriate recommendation to State parties after the assessment. The Shadow Report in 2008 at 41<sup>st</sup> Session of CEDAW Committee, in their concluding comments, recommends that there is a need for appropriate legislation to protect women and girls from harmful cultural and religious practices which are impediments to national and individual development of women (WACOL, 2008: 69; Ijeoma, 2009: 7)

In addition, an Optional Protocol to CEDAW was adopted by the UN General Assembly in October, 1999. It entered into force on 22<sup>nd</sup> December, 2000, after its ratification by the tenth State party to the Convention. The Protocol “reaffirms the determination of the State parties...to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms<sup>4</sup>”. This document provides two main procedures by which human rights violations against women can be addressed. The first procedure allows individual women and groups to petition or submit claims of human rights violations which are protected under the Convention to the Committee. Such a claim will be considered by the Committee, provided certain criteria are met; and particularly that all domestic remedies aimed at seeking redress and/or justice were duly exhausted. This is to avoid any interference in national affairs but the Committee will only act as an appellate body.

The other procedure has to do with inquiry by the Committee. This allows the Committee to initiate inquiry into grave or systematic violations against women. Here, the Committee can at any time remedy any serious situations. This is the opposite of the first procedure because this second procedure is somewhat seen as interference. Article 10 of the Protocol makes a provision of “an opt-out clause” whereby a State party has the option of refusing to recognise the competence of the Committee to instigate or carry out any inquiry. These are the dilemmas of these Conventions; yet these procedures give individuals the opportunity to press further by going beyond the local remedies if a particular case cannot be remedied.

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<sup>4</sup> Preamble to the Optional Protocol

### **2.4.3 Protocol to the African Charter on Human and Peoples' Rights**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) was adopted on 11<sup>th</sup> July, 2003 in Mozambique (WACOL, 2008: 20). This document puts more weight on the rights of women as stipulated by the African Charter. Article 1 explicitly explains key issues concerning women such as “discrimination, harmful practices and violence”. There are various articles in this Protocol that are clearly against harmful traditional practices; and relevant to widowhood rites.

Article 2 is wholly on the elimination of discrimination. Sub-section 1b calls on state parties to enact and implement appropriate legislation or, better still, put regulatory measures in place to curb all forms of discrimination and harmful practices which put the health and general well-being of women in danger. Article 2(2) underlines that:

*“State parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or either of the sexes, or stereotyped roles of women and men”.*

The rights of widows are emphasized in Article 20(a), which explicitly says that the States parties should ensure that “widows are not subject to inhuman, humiliating or degrading treatment”. According to article 20(c) a widow “shall have the right to remarry, and in that event, to marry the person of her choice”. Article 21(1) emphasizes the rights of widow on the basis of “inheritance of the property of her deceased husband”. This means that this document is another worthwhile legal instrument that clearly promotes women's rights against any harmful traditional practices.

## **2.5 Conceptualizing Legal Pluralism**

This section briefly describes legal pluralism as one of the crucial conceptions that is relevant to the contests and contradictions of customary law, reflecting the true picture of traditional societies, particularly in African social settings. Legal pluralism is described as a situation where “the sovereign commands different bodies of law for different groups of the population varying

by ethnicity, religion, nationality, or geography, and when the parallel legal regimes are all dependent on the state legal system” (Merry, 1988: 869, 871). It explains the connection and interaction among members of local communities and families which are “shaped according to the requirements of customary laws, and often religious laws, which exist alongside the state” (Wanitzek, 2008: 33).

It is, however not surprising that, several legal pluralist models have been criticized for some reasons, predominantly coming from its reputation as “unnecessarily complex, as denying the principle of equality before the law, [and] as underpinning grossly unjust modes of production or racial discrimination” (Woodman, 1998: 159, note 16). Also, there is a frequent upheaval to differentiate analytical from empirical legal structures and this has led to several misinterpretations. For example, some scholars unswervingly classify desirable or undesirable empirical orderings of legal pluralism with the concept of law (Tamanaha, 2000: 300; Benda-Beckman, 2002: 45). Tamanaha explained that most concepts of law are overtly and covertly assumed by “legal pluralists” (2000: 300). However, both Woodman (1998: 48) and Benda-Beckman (2002: 45; 1997, 1983) did not see this flowing out of the conceptual debate. They believed that the notion of legal pluralism supports moral and political purposes. This is partly done to get more recognition for legal orders not recognised by the state (Sheleff, 2000: 172; Hellum, 1995: 25).

Like Jackson (1992) and Williams (1992), however, I see legal pluralism as an emblematic recognition that inhibits more drastic political and economic claims of oppressed and marginalized population groups such as the plight of widows which I will analyse in the later chapter. Besides, legal pluralism induces harmful implications because it symbolizes the recognition of socially or morally repugnant values such as widowhood rites, caste and so on. Iwobi (2008: 48) noted that “most legal pluralist scholars accept that in order to appreciate the occurrence of legal pluralism in all of its diversity and complexity, it is necessary to venture outside the domain of state law”. This posture is replicated in legal pluralism's "decentering theme", which, is explained as "attempts to dislodge the assumption that the state is the sole or even the privileged source of law and emphasizes instead the coexistence of multiple

contending orders, each with its own autonomous source of legitimacy” (ibid.). This phenomenon was primarily signalled by Merry (1988: 889) who was able to discover a shift away from the inclination to think of all legal orders rooted in state law and an accompanying willingness to focus attention on other forms of ordering. Fuller (1994:10, quoted in Iwobi, 2008: 48) alludes that a fundamental and indisputable fact revealed by the literature on legal pluralism is that state law normally co-exists with non-state law and that contrary to its own ideology; state law never enjoys unambiguous and unchallenged dominance over the non-state sector.

A few criticisms of legal pluralism examined in this paper have shown that there are still disagreements and these include misunderstandings on equality principle and on how to differentiate analytical from empirical legal structures in a one-to-one way. One can invent analytical classifications in a relatively clear manner, but empirical data may not often fall wholly within only one analytical domain as noted by Benda-Beckman (2002: 47). Women’s rights, for instance, would qualify as legal but they are apparently also social and often political. But that does not indicate that no useful analytical differences could be made between legal, social and political. It only shows that these categories are not equally exclusive. This has implications for this study because it showed the interrelations between different legal forms within the plural legal whole. These criticisms are empirically challenging because of the different elements (e.g. state law, customary law) in hybrid forms, which cannot be inferred from the conceptual frame of legal pluralism. In order to resolve these misunderstandings, there would be a need to develop analytical peculiarities that show the dimensions of distinction in plural legal structures.

Further to the foregoing, customary law on its own part is both flexible and archaic source of customary edicts, often going back to the colonial era. Most legal pluralist scholars refer to it as “informal” or “unofficial” law (Nabudere, 2002; quoted in Juma, 2006: 223). Acknowledging that each country has its own unique approach to law and has different ethnic groups is very important. Taking this caution helps in making any decisive statements about what customary law is or is not. Customary law is a dynamic basis rather than being static. It makes provisions for the guiding principles of interrelationship

within and between one generation and the subsequent ones. It mirrors the accepted usage of cultural norms which implies that it is subject to flexibility and adaptability to changing circumstances and society. It revolves around the uniqueness of social institution, religion and beliefs that characterizes a particular society. Customary practices are at variance from one community to another. For the mere fact that there are differentials; it is important to note that no practice is inferior or superior to the other. This makes it problematic to swap one culture with another.

Turning to the main focus, the legal pluralism that I am concerned with is derived from the fact that the affairs of widows are structured by multiple legal and normative orders within a defined territory. As Davies (2005: 108) noted, the “mainstream state-based law is itself plural in that it is derived from plural sources”. Secondly, pluralism is also generated from the co-existence of state and non-state normative orderings within the same defined territory. As Tamañana noted, this sort of pluralism in several post-colonial countries replicates the virtual weakness of the state concerning these other normative arrangements (2000: 299). Implying that in several spheres of social life, it becomes difficult for the state legal system to freely make its terms of orderings. Thus, legal pluralism arising from the co-existence of state law and non-state normative orderings within the same regional space is so deeply ingrained in various legal environments, especially in the global South. This perhaps means that the positioning of this debate on enhancing women’s right ideas is not inherent in the framework of international legal instruments and national legislation but on moral, customary and political grounds that are appealing to a particular society. And this is part of what has generated challenges and paradoxes on women’s right issues across the world.

## **2.6. Concluding Remarks**

This chapter has briefly looked at gender as a construct which has resulted in unequal power relationships between men and women; and made women to fall prey to gender oppression emanating from customary practices. It further discussed how harmful traditional practices, backed-up by cultural legitimacy,

are seen as a form of gender-based violence. Also, it examined women's rights as human rights, with emphasis on international legal instruments and treaties (UDHR, CEDAW, African Charter on Human and Peoples' Rights). A cursory look at all these international Conventions clearly shows that the global faith of rights of women have enough expressions and prominence. However, the recognition and realization of women's rights remain an on-going struggle of emancipation, particularly from the bounds of harmful widowhood rites in international human rights law. This is because of their social and political complexities together with their applicability to various customary laws in the world. The complexity of legal pluralism and the controversies across the world were also mapped-out.

Having established the conceptions revolving around gender, gender-based violence, global legal instruments and legal pluralism, it is essential to now get a basic understanding of the context, causes and effects of the harmful practices—widowhood rituals, on which this research focuses. This will be addressed in the next chapter, drawing from the literature study and my personal experiences and direct observation of widowhood practices in Yoruba land.

## **Chapter 3**

### **WIDOWHOOD RITES IN SOUTH-WESTERN NIGERIA: CONTEXT, CAUSES AND EFFECTS**

#### **3.1 Introduction**

As a next step in analysing the widowhood rites in South-Nigeria, this chapter considers the cultural, historical, social-economic and political factors that explain the context, the (perceived) reasons for widowhood practices and the harm they present to the survival of widows in Yorubaland.

#### **3.2 Overview of Widowhood Practices: A Nigerian Perspective**

Widows are women that have lost their husbands through death. In this period, the bereaved mourn their loss and in many places they are expected to undergo a series of rituals referred to as widowhood rites/rituals. Widowhood rites, as practiced in many traditional African societies, are the practices that accompany the mourning of the loss of one's spouse. The period of mourning is coupled with a series of life events which often have wide-ranging implications. Some of these practices are variously described as barbaric, atrocious, "backwards, immoral, commoditization and an abusive violation of the sexual and human rights of powerless" (Nyanzi, Emodu-Walakira and Serwaniko, 2009: 13; and Sossou, 2002). Although men may also experience such rites when becoming a widower, women often are especially harmed by these rituals because of how the societies relate to them, particularly on the bases of gender, cultural norms and the patriarchal structures of many Nigerian societies.

Generally, in Nigeria, widowhood practices are observed by almost all ethnic groups (the major ethnic groups in Nigeria are Yoruba, Igbo and Hausa). However, there is a variety of forms of such traditional practices across ethnic groups (Olakitike, 2009). In one community in South-South Nigeria (Delta State): "after an initial seven-day confinement, a subsequent thirty-day confinement for mourning in a tiny outdoor hut is mandatory for widows"(Ewelukwa, 2002: 437). This is done to ensure isolation, restricted freedom of movement and association and hair shaving of the widows during the mourning period.

In South-Eastern Nigeria (Igbo culture), the mourning ritual exposes widows to a number of hardship in an attempt to prove their innocence in relation to their husband's death, they are kept in dark rooms for days and sometimes deprived of access to food. In a 1998 documentary titled 'Till Death do us Part', Nwanneka Ezuowu (a Nigerian widow interviewed) said "I was not allowed to eat or drink until my husband was buried". They are forced to drink the water used to bath their dead husbands and also forced to sleep in the same room with their dead husbands during this mourning period. Further, part of Igbo culture indicates that a widow is truly expected to be mourning her spouse with black clothes. She is also expected to "allow the married daughters (Umuada) of the community to shave her head and public areas with razor blades" (Samuel, 2011: 186; Till Death Do Us Part, 1998).

After the mourning rituals, a widow is dispossessed of her husband's property (depriving her of inheritance) by her in-laws. In the documentary mentioned above, Uche Anabude recounted her bitter experience as follows: "(.....) we have two cars, we were living in two-bed room flat in Lagos (South-West Nigeria) but my life turned sour when my husband died" (Till Death Do Us Part, 1998). This means that the widowhood rites enforced on widows mete out different kind of losses and inevitably expose them to economic hardships, confinement and ill-treatment (Anugwom, 2011: 89; Samuel 2011: UN 2001: 2-3).

According to traditional community norms, widow women in Yoruba land are expected to mourn and be confined for three, six, eleven or twelve months. But in recent times, civilization and religious beliefs have influenced the number of days or months for mourning rituals and confinement. My late brother's wife whose husband (Mayowa Afolayan) died (on 23 April, 2011), only used 21 days to mourn and was confined for those days. My mother told me that the family members said that she needs to mourn for forty-days but that she intervened on the matter in reflection of her "religious beliefs as a Christian and due to the ways things have been changing in the modern-day (excerpt from her discussions with me on 10 October, 2011). I thought about this discussion as I sat in the living room of my mum because of the sensitivity of the questions and I took the view that, today, traditional widowhood practices still

compete with a full arrangement of legal instruments and national legislation but have had to change to some extent as a result of civilization and religious beliefs of the affected members. Civilization defines what amounts to tradition because what is called tradition is located within it and created by it (Merry, 2006: 13; Menon 2000: 76).

Nevertheless, in some Yoruba communities, it may not be easy to alter the traditional widowhood rites in the way my mother altered the days for mourning and confinement of my late brother's wife, especially if they are traditionalist or have obsessions for Yoruba customs. Therefore, understanding a norm, the cultural context and assigning meaning to individual behaviour in which widowhood narratives are made is crucial. Otherwise, one could be using one's personal cultural predisposition to assign a certain meaning to traditional practices such as widowhood rituals which could have a totally different pattern elsewhere in the same South-Western Nigeria. It should be borne in mind that "culture is subjective and its manifestations are relative" (Juma, 2006: 223). What is acceptable in one culture in Yoruba land may not be acceptable elsewhere in the same Yoruba domain. Having outlined the aggregate view of widowhood rites in Nigeria, the next section will explore the historical and cultural perspective of the Yoruba widowhood practices.

### **3.3. Historical and Cultural Context of Widowhood Rites in South-Western Nigeria.**

In every African society, any bereaved spouse has to undergo rites upon becoming a widow or widower, although there are some cultural variations in the form they take. Widowhood rites are described as a social obligation for women, associated with given institutionalized religio-cultural norms. It is also a period "when a widow is expected to be grieving or mourning the loss of a beloved one, precisely a husband" (Samuel, 2011: 185). Widowhood is shaped by marriage of ordinance (Western-type), customary marriage and cohabitation (living with a man without getting married legally or customarily). Whether this union results in having children or not, the woman is expected to go through widowhood rites upon the death of the spouse. It is believed that these rituals

are symbolic due to traditional values evolving to accommodate “irreconcilable conflicts inherent in death” (Sossou, 2002: 202), and the “profound spiritual implications and consequences” of death (Martey, 2005: 130).

This indicates that this phase of life for women is not a period of comfort or a pleasure-giving experience. It is not a pleasure because in many Yoruba communities, upon the spouse’s death, the widow is effectively stripped of the status that she attained upon marriage. Iwobi (2008: 53) noted that the “adverse implications of losing her exalted marital status are forcibly brought home by subjecting her to such manifestly debasing practices as having to sit and sleep on the bare floor or on a straw mat for a prescribed period, often in insalubrious conditions, and compelling her to eat her meals from cracked, battered, or very old plates”. The practices are intended to symbolize the widow’s dethronement and her consequent reversion to her previous deprived status (Bamgbose, 2005: 71)

Drawing from my experience, I became aware of the widows’ experiences when my father suddenly died on 30 November, 1999. I was 21-years old then and this means I could know and identify what was wrong from what was right at that particular period. I observed that widowhood practice possesses defined cultural values which are exclusively preserved for Yoruba widows, not widowers. This is because I had earlier witnessed the rites of some widowers in our neighbourhood prior to the death of my dad in that particular year. These rituals are inherently gendered because a widower has no customary laid-down laws governing his mourning rites (Samuel, 2011: 185; Anugwom, 2011: 89; Agumagu, 2007).

Widowhood rites greatly deal with intensifying the position of the dead man rather than allowing a factual passage for the widow’s agony. Women are expected to openly and formally demonstrate their grief and intense feelings. Normally, widowhood is supposed to be the mournful period of accepting one’s loss quietly and privately. Nevertheless, in Yoruba culture, it is an enduring period of deep-rooted agony, exclusion, anxiety, restrictions isolation, trauma, insecurity and pain. These were life-threatening effects of the widowhood rites which my mother felt when my dad died. It was an appalling experience for her but as young as I was then, I made sure we were not dispossessed

of our father's properties and she was not inherited as Yoruba culture demands.

These appalling experiences make widows prone to psychological, social, economic, physical and emotional agony following the loss of their husbands. By far the most touching event is when the widow's husband's brothers tend to be greedy and deceitful. Properties' dispossession and chasing off are aberrant features of widowhood in Yoruba communities (see UN 2001: 18, end-note 28). In some Yoruba communities, widows may have to go into the thick forest at night and recite some incantations for the purpose of "cleansing". As indicated before, widows are also made to drink the water used to bathe the corpses of their deceased spouses; and they are shaved and kept in seclusion for months while consultations are on as to the real cause of death of the man. Had we been in our home town (name withheld) in South-Western Nigeria, and my late father had not been a pastor, my mother would have been forced to undergo the full-scale of the rituals.

The widow is not expected to receive condolence visits from sympathizers during the period of mourning. She is to be re-married to a relative of her late husband (*isulopo*), she is to sit on the floor, weep and wail loudly at intervals during any period of the husband's burial rite. She must remain in confinement after the death of the husband for a given period dictated by tradition. In most cases, she must vacate the matrimonial home for the relatives of her husband. This has social and health consequences. Shehu et.al (2010: 102), Sossou (2002) and Nzewi (1989) posited that the health consequences of these experiences are stressful and devastating for the widows' well-being. They can even be deadly, depending on the kinsmen, tribes and form of the rituals in a particular Yoruba community. Parkes (1995) and Adler et al. (1993) explained that a widow can become isolated and suffer emotional and mental problems due to problems and hardship experienced by her.

Furthermore, the strict social prescriptions and cultural control that apply to widows are different from that for widowers. Discrimination and gender stereotypes that reflect throughout the lifecycle of women and men appear to transfix during widow(er)hood, with dissimilar effects on the status of women and men. Upon the death of the husband, a woman's status shifts downward

while that of widower remains unchanged. This downward shift brings about a decrease in social status which eventually has implications for widows' livelihood, quality of life, and economic status. It also increases their vulnerability to discrimination, gender-based violence and abuse. Several scholars have attested to the fact that these widows face more restrictions than widowers do and endure the most humiliating rituals in relation to dressing codes, eating food, sexual activity, ritual seclusion, isolation, discrimination, oppression, untold spiritual violence and emotional trauma (Sossou, 2002: 202; Ewelukwa, 2002: 427; Martey, 2005: 130).

Pressures are mounted on widows in the course of these rituals for them to remain faithful to their spouse's memory. Bereaved men are pressured into a hasty remarriage and their freedoms are not restricted by taboos. Occasionally, in some Yoruba communities, widows perhaps are forced into new connubial relations with a male relative or forbidden to remarry, even if they may desire to do so. Sometimes, mourning customs may desexualise the widows' attractiveness through their dress codes, restricting their participation in social activities. For example, my mother shabbily wore black clothes for 40 days during her mourning rites in 1999 and was in confinement during this period. The claim for preserving culture tends to be the basis for defending male control over women. Thus, the historical, cultural and gendered context of widowhood practices across Yoruba communities and beyond exhibit common strands which run in different formats. But the fact remains that the widowhood rites make widows suffer from discriminatory practices, as a result of power relations, cultural factors and gender patterns.

### **3.4 Widowhood Practices Silenced in South-Western Nigeria.**

Communities in Yoruba land are transitional because they are characterized by influences and variations in cultural practices and perceptions. They are bonded by economic and social relations such as trade, religion, education, social values and beliefs. While Yoruba communities could be branded as being receptive to social changes, certain customary practices have survived this transition. The widowhood rite is one of those traditional practices. Various socio-

cultural beliefs and practices revolving around widowhood practices have supposedly continued in these modern-day communities.

Widowhood practices among the Yoruba ethnic group in South-Western Nigeria, in part, are characterised by human greed, superstitious beliefs and religion. A recent finding by Oyeniyi (2010) reveals that the intensity of these practices also could be characterised by the social status of the widows. Notwithstanding, these are geared towards the persecution of the widow. Degraded by the rites, the widows are reluctant to discuss any forms of persecution such as economic dispossession and the possible hardships they are facing for fear of cruelty. They are afraid to talk about their experiences because of their kinfolks' reactions or the probable evil occurrences following the disclosure of their experiences. Out of my curiosity to confirm the evil occurrences following the silence of some widows in Yoruba communities, I had the opportunity to interview two widows in Ogun State on the 11 and 12 October, 2011 (names withheld). As I engaged with them, my first strategy was to focus on the issue of non-disclosure of the oppression and hardship they faced after the death of their husbands. My second focus was to locate where the widowhood practices violate the women's rights as documented by international legal instruments and other national legislation.

From our informal discussions, I discovered similar terms and outcomes that Fasoranti and Aruna (2007) noted already that "after the wailing periods, widows experienced several degradations and deprivation". They echoed that they were the prime suspects when their husbands died and were asked to swear to an oath which they eventually did. Oyeniyi (2010) also confirmed that widows in Yorubaland may be indicted of killing their husbands and therefore could be asked to swear with either the Holy Quran or the Holy Bible to prove their innocence. As I talked to the two widows in Ogun State, I observed that they responded to the questions I asked them with similar answers but in different ways. The responses to my first question were that they remained silent and put on smiling faces even when in the face of oppression and hardship, for the sake of their lives and children. Should they disclose their untold hardship and experience publicly, the consequences may be severe.

My direct observation during my mother's struggle in 1999 after the death of my dad confirms the spiritual implication of disclosing sensitive information relating to widowhood practices as the two interviewed widows also said. The effect of my mother's public disclosure of the hardship and oppression she faced too has been severe in the last 12 years. Yoruba widows do not even go through all the traumatic experiences and much widowhood rites that widows go through in other regions in Nigeria (for example, South-East Nigeria). However, humiliations, economic dispossession and inconsolable sadness are inherent in the Yoruba's widowhood practices too.

Secondly, locating where Yoruba widowhood practices violate the women's rights will be explained in later chapters. But I want to quickly note that most of these abuses of women's rights are perpetrated through the patriarchal shape, and unequal power relations existing between men and women and the greediness of some family members in Yorubaland. The rites, often without disclosure and consent, and of course with the procedural duration of wailing, property dispossession and other hardships, together with food taboos are a depressing reality of what might even cause widows' deaths in some Yoruba communities. Moving from life to health, I can mention these same forms of gender-based violence which takes a much toll on the entire subsequent course of widow's physical and emotional health. Far more common, even now, as earlier said, is the case where the widows either remain silent by concealing their untold hardship and oppression or they are made to feel a crushing burden of self-blame if they come forward to make a disclosure publicly.

Meanwhile, the ethos of each family/community and religious leaders play a crucial role in these processes. Widow's choice of remarrying is respected after the rites have been performed. However, still some communities go against this by forcing such a woman to remain under the guardianship of one of her husband's families. The absence of studies revealing how widowhood practices have evolved or changed over time in Yoruba land is challenging. Perhaps, this can be explained from the impact of the major world religions (Islam and Christianity) coupled with colonialism on the indigenous Yoruba cultures and by extension—African cultures. There is no vivid explanation of the changes that these two major religions have conveyed to this institution.

Nevertheless, it seems clear that in many sub-cultures of Yoruba today, widowhood practices exist as mixtures of traditional usage and practice traceable to Christianity or Islam or both. Sossou (2002: 205) noted that Christianity and Western influence have “reviewed and modernised some of the widowhood practices”. Nyanzi et al. (2009:14) noted that the position of widows in African societies pictures them as victims of culture which make their agency to be prone to perpetuating practices dehumanizing them and overturning entrenched customary and religious practices. Hence, the momentary references to this research on widowhood practices in Yoruba communities also extend a warning to the reader about the risk of laid-back assumptions and generalizations on the ground of little or no evidence. Variations appear to be the hallmark of Nigerian cultures. However, scholars are yet to tease-out cultural values and meanings germane to sub-groups (Ijebus, Ijeshas, Ekitis, Egbas, Lagosians, Igbominas, Yewas and so on) in Yorubaland with marked differences in their way of life pertaining these rituals.

To draw attention to widowhood practices and the variations is not to disclaim that there are perhaps similarities in South-Western Nigeria. These similarities are set on the duties and hardships expected of widowed women. As stated earlier, widowhood in Yoruba communities is a period of hardship and deprivation. This period includes erratic degrees of seclusion, degradation and ritual impurity calling for purification. Similarly, Yoruba people convey substantial elements of their traditional practices into the religions they embrace. This implies that widowhood practices in Yoruba communities today and by extension, Nigeria, are a mixture of traditional African practices and practices imported from Christianity and Islam.

### **3.5. Concluding Observations**

Modern-day Yoruba society is somewhat characterised by an incoherence of cultural insights arising from outside Yorubaland. These include tribal wars, the slave trade, colonisation, and the amalgamation of northern and southern Nigeria in 1914 by the British colonial masters under the leadership of Lord Lugard. It also includes foreign socio-economic relations (trade, missionaries,

western education), the First and Second World Wars, Independence and Civil War. Present-day Yoruba society is a transitional community in the above sense. While Yoruba society is somewhat receptive to change, some specific customary practices have survived this transition. Widowhood rites, as shown in this study, are among them. Therefore, many cultural beliefs and practices revolving around widowhood rites have seemingly survived in modern-day Yoruba society.

My personal experiences and further narratives regarding the context, causes and effect of the widowhood practices in Yorubaland have shown that cultural, historical, legal and socio-economic factors that influence the rituals are channelled through cultural values, economic interest and unequal power relations to undermine the rights of the widows but can be modified by religion, civilization and educational attainment. Having said this, it is also necessary to explain how widowhood practices violate the rights of Yoruba women and to present analysis of some challenging forces involved if widow's rights are to be realized.

## **Chapter 4**

### **ANALYSING WIDOWHOOD PRACTICES AS A HUMAN RIGHTS VIOLATION AND THE CHALLENGES INVOLVED.**

#### **4.1. Introduction**

In the previous chapters, I have conceptualized specific frameworks such as gender relations, gender-based violence, Human Right-Based Approaches with emphasis on CEDAW and the Maputo Protocol to the African Charter on Human and Peoples' Rights which underpin my take on the women's rights aspects of the plights of widows in Yorubaland. However, I still believe there is more to be said. Drawing from my experience and direct observation, together with empirical findings, I have explained the extremity of the traditional position on widowhood rituals and the significance attached to it as far as authenticating the said traditional practices in Yorubaland. Now, analysing widowhood practices as a human rights violation and the implications of the aforementioned conceptions for the plight of Yoruba widows in light of the prevailing Nigeria legal system and women's rights instruments will be mapped-out in this chapter.

#### **4.2 Nigeria's Legal System: Implications for Widowhood Practices in Yorubaland.**

This section will analyse the rights of women—widows, under the customary laws of Nigeria. Nigeria's legislation and obligations with respect to these practices in international legal documents will be examined together with how Nigeria set forth to respect, protect and fulfil them.

As briefly explained in section 1.5 of this paper, Nigeria is a federal republic, composed of 36 states. It also is a multi-ethnic nation made up of over 250 various people with the Yorubas predominant in the South-West, the Igbos in the South-East along with the Hausas in the North. Nigerians subscribe to Islam, Christianity and forms of indigenous worship. The Nigerian legal system consists of the Statutory Law, Common Law, Islamic Law and Customary Law. The Statutory Law consists of reworded English Statutes, which were

written, amended or re-enacted over the years. The Common Law is a significantly accrued body of English case law. Islamic laws are religious creeds applicable to those subject to it (Sharia: in Northern Nigeria). Above all, the Constitution of the Federal Republic of Nigeria is the “supreme law” (1999 Constitution, Section 1[1]), and all other laws, are subordinate to it. It attempts to protect the equal rights of all citizens before the law as well as the rights which guard against discriminatory practices either expressly or through practical application of any law.

In Nigeria, like other ethnic groups, Yoruba people are deep-rooted in customary practices, cultural and religious beliefs. Yoruba culture and religion are co-joined twins. In Yoruba land, culture is a “means of expressing religion, whereas religion is a part of culture” (Olajubu, 2008: 312). This implies that Yoruba’s cultural values are reflected in other areas of human experiences; while religion also filters through every aspect of Yoruba livelihood. This tends to make cultural practices and religious beliefs compete with, and in many situations overtake, the laws of the land with regard to issues such as harmful traditional practices. Issues relating to widows are mostly affected, resulting in discrimination and violence against Yoruba women. The highest occurrence of these discriminatory practices happens in the private-sphere and even in the presence of closely knitted families.

Admittedly, the Nigerian Constitution of 1999, in section 42, explicitly prohibits discrimination on grounds of sex. However, there are a few items in the Exclusive Legislative list which precludes the federal government from legislating issues relating to women under Islamic and customary law. Hence, it is intriguing to know that the cultural and religious beliefs as well as the pluralistic legal system, compound the discriminatory widowhood rites in Yorubaland. By extension, it leaves important issues that have enormous implications for the legal status of women in Nigeria to the various states that make up the federation to decide individually.

### 4.2.1 Nigerian Customary Law and Traditional Practices

Customary law is the bedrock of activities in all human endeavours globally, providing vibrant guiding norms, beliefs, social institutions and religion and being transmitted from one generation to another. This uniquely characterises a particular community or society. It continues to be recognised in Nigeria as a branch of the law. Not all customary laws are repugnant or result in discrimination. Yoruba culture has a “common trend of influence running through them” (Olajubu 2008: 314). This means that Yoruba people generally have many rich traditional practices which are satisfying, unique and give room for true social bonding, with emphasis on harmony which is the social foundation of the Yoruba society.

Nevertheless, within Yoruba culture there are some traditional practices that are discriminatory and lopsided, especially against women. It is within this purview that those traditional practices are generally regarded as being repugnant to natural justice, good conscience and equity. Notwithstanding this, the socio-economic and political life in Nigeria today is changing swiftly and incredibly. Some particular ancient practices and customs have vanished and new ones are emerging to deal with the new situations. However, it is mystifying to know that traditional practices such as widowhood rites, which infringe on women’s rights, decline to change. If the 1999 Constitution of the Federal Republic of Nigeria has changed quite a few times to accommodate global changes, there is no reason why customary laws which are considered closer to the pattern of life of the Yoruba people cannot be subject to changes (see Iwobi, 2008: 70).

To set the context of inheritance under customary law, it is appropriate to know that cultural practice of inheritance is not under uniform law in Nigeria. Individual’s ethnic group and religious beliefs determine the law that would be applied. Historically, colonization plays its part in the inheritance procedures in Nigeria. With the advent of colonization, men were apprehensive of the colonialists and did not expose their wives to them. Men entered the labour force to work with them and Nigerian men were seen as the breadwinners. The introduction of exchange and privatization of land turned-around the transaction

which was only done between men and colonialist (Pearce 2001: 95; Saito, 1994: 50-51). In case of a statutory marriage, inheritance through marriage is governed by the Marriage Act (1990: section 26). It makes provision for a widow to inherit part of her husband's property and estate including land. Admittedly, when there is a will, the property will be administered according to the wishes of the deceased husband. This is the theoretical aspect of law but the reality is a different ball-game.

By and large, widowhood practices tend to be moving towards a rather complicated legal system where no clear formal guidelines are available on the said rituals. During my short stay in Nigeria ( October, 2011), I noticed that even the traditional practice suffered from a lack of clear formal definition in terms of what and how the widowhood rites should be done across the Yoruba states that I visited (Lagos, Ondo, Oyo and Ogun). The two widows that I discussed with in Ogun State also confirmed this. Coupled with the plurality of the laws on inheritance (including customary laws), the multi-layered legal system in Nigeria leaves a gap that allows the courts of law and self-serving communities, including the unscrupulous relatives, to choose the laws that are beneficial to their own interest and to the disadvantage of the woman. Having examined the multi-faceted shapes of the Nigerian legal system, the next section attempts to deal with how widowhood practices violate the Nigerian Constitution and the prevailing international human rights law. Further, they will also be analysed in terms of gender relations and gender-based violence.

### **4.3 Widowhood Practices as a Violation of National Laws in Nigeria**

As I have earlier stated in section 4.2., of all laws in Nigeria, national law as contained in the Constitution of the Federal Republic of Nigeria is supreme over all other laws. In as much as the rights of all Nigerians are explicitly documented in the national law irrespective of sex, women should also be protected as is clearly spelt out in the nation's Constitution, as will be explained in more detail below. However, there is no particular law that protects the rights of widows in Nigeria against harmful traditional practices. Even if relevant law

exists, it may be limited in scope by virtue of the potency of customary laws and diabolical powers associated with the rituals which eventually place undue burden on the victims. In some cases, some of the laws relevant to the plight of women are couched in provisions that are not favourable to women and sometimes the women are not even aware of the existence of the laws.

Specifically, under the 1999 Nigerian Constitution which Nigeria is still using, in Chapter IV titled “Fundamental Rights”, every Nigerian is guaranteed the following fundamental rights from section 33 to 43 respectively. The right to: life, dignity of the human person, personal liberty, a fair trial, privacy and family life, freedom of thought, conscience and religion, freedom of expression and the press, peaceful assembly, freedom of movement, freedom from discrimination and to acquire immovable property anywhere in Nigeria. In the same vein, Chapter 2, section 15 of the Constitution provides that discrimination on the ground of sex shall be prohibited, whilst section 17 states that “the social order is founded on the ideals of freedom, equality and justice. The sanctity of human persons shall be recognised and enhanced”. Relevant to the plight of women is the protection provided by section 42 of the Nigerian Constitution, which clearly protects women against any form of discriminatory practices on the ground of sex.

Based on the above provisions in the 1999 Constitution, widowhood practices in the first place violate the “right to life” of widows as listed in section 33 (i). Since the right to life is among the fundamental human entitlements enshrined in Nigerian Constitution, I argue that widowhood rites violate this law. Many women are exposed to dangers that can easily claim their lives in the course of the death of their husbands because of the socio-economic and spiritual elements of Yoruba widowhood rituals. And of course, the physical and psychological impacts of the gender oppression and economic hardship the widows suffer, majorly causes the widows’ social death which (Owen, 1998). Though the deaths of the widows as a result of these forms of violence have not been really documented, I have seen two widows who died as a result of the impact of oppressive widowhood practices in Ibadan, Oyo State in 2001 and 2006 respectively (names withheld).

Moving from the right to life to the dignity of a human person, I can indicate these same forms of violence, which have severe effect on health. Let us also consider the inhuman treatment, isolation, confinement, dethronement (loosing status), defacement (looking unattractive and unkempt) and disinheritance (disposed of all husband's properties) widows are subjected to. This violates the right to dignity of a human person and as well infringes on the right to personal liberty that women should enjoy as enshrined in the sections 34 (ii) and 35 (iii) of the Constitution respectively.

More importantly, widowhood practices also infringe on the right to freedom from discrimination (section 42: sub-section x, Chapter 2, section 15; section 42) and protection against any form of discriminatory practices on the ground of sex. I theorised gender relations as a social construct in Chapter two, but there is more to be said in terms of its relevance to the way women are discriminately threatened by the widowhood rituals. Ewelukwa (2002: 437) noted that widowhood rites vary across Nigeria but the common elements include "varying degrees of isolation and confinement, restricted freedom of movement and association and hair shaving". As for gender relations, we could spend volumes describing ways in which widowhood rites and their impact cripple the enjoyment of freedom from discrimination.

Generally, in the pre-colonial Yoruba society, there was a prided place for gender identity and social cohesion through Yoruba culture and religion. Every aspect of Yoruba living then did not lie outside the scope of culture and religion. These holistic Yoruba paradigms in relation to gender relations provided "avenues of empowerment for both male and female alike. Consequently, women play leadership roles in Yoruba religion especially as concerns rituals" (Olajubu, 2008: 313). There is an assumption that the draconian nature of widowhood rites in Yoruba land then might not be as discriminatory as the one that is practised in the post-colonial period but this assumption may be inaccurate because there is no empirical evidence due to the invisibility of the rituals in the private realm. Still, women had equal membership with men and were part of the sustaining forces of Yoruba society that were creating alternative spaces and axes of power relations.

The alternative social space for equal membership and power relations in the past were needed for peaceful co-existence of the people (both men and women) and this reduced social exclusion to barest minimum. Through this, certain culturally-based activities were performed for the governance and development of Yoruba communities (Afonja, 1986; Soetan, 2001: 22). Although it is important to know that not all local traditions are beneficial to women. This might have resulted in a few largely unseen discriminatory cultural practices and injustices during the pre-colonial period. Widowhood rites existed during this period, though the way the rituals were shaped is not well-documented because they were not made visible in most of the Yoruba societies. This scenario reflects that widowhood practices as one of the Yoruba cultural practices are in private rather than in public domains.

However, Western colonization changed the gender roles and relations in most of the developing countries, including Nigeria (Mohanty, 1991: 341; Soetan, 2001: 22; Pearson 1992). These changes made formal alternative to customary law which polarised the social and legal structures of many African countries till today. The effect of these changes affected the gender differences in several traditional practices. For example, in Nigeria, the ideology of colonization attacked the traditional power with its “new hegemonic forces” (Mo-jubaolu, 2003; as referred to in Iwobi, 2008: 44).

Right from the beginning, British governance strategically and effectively utilized and twisted the legal sphere to accommodate their intended preferences. As Shadle (1999:431) elucidates, the British authorities, “hoped to twist gender relations into forms more to their liking and the legal arena served as a particularly useful place to do this”. This was the situation Nigeria found herself in and the same thing also applied to other colonies in sub-Saharan Africa. While family patterns have changed, customary laws of the past still continue to affect the gender roles and relations in Yoruba societies. Despite the fact that these rites infringe on a number of fundamental rights set out in the Constitution, the discrimination grows and widowhood rituals are still perpetrated. I will briefly shed more light on some particular international human rights testaments that widowhood practices violate in the next section.

#### **4.4. Widowhood Practices as a Violation of International Human Rights Norms**

After the above reflection on how widowhood practices violate the fundamental rights of widows as enshrined in 1999 Constitution and how colonization, the multi-faceted legal system and gender relations play tremendous roles in fuelling the discriminatory practices, this research also is to pin-point where the widowhood practice violates international human right norms. These rites tend to threaten international human rights of widows under several Conventions and treaties. For example Article 20 (a) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa explicitly states that "widows are not to be subjected to inhuman, humiliating or degrading treatment". Article 21 (1a) also makes legal provision for widows to have "an equitable share in the inheritance of the property of her husband". Besides, Article 27 (1) of the UDHR clearly focuses on an individual's freedom to participate in the cultural life of the community. This implies that participation in cultural practices should not be enforced on any person based on gender. Because an individual (irrespective of sex) has rights regarding cultural practices, the imposition of harmful widowhood practices on Yoruba widows is tantamount to an infringement of women's rights (Otto, 1999b: 132)

In addition, Article 27 (1) of the UDHR focuses on an individual's rights regarding cultural practices. It states that "everyone has the right to freely participate in the cultural life of the community", that is, without being coerced or forced. Article 2 sets out the importance of the "principle of equality" and how state parties are bound in using "appropriate legislation and means" to realize this principle. These are guidelines which State are obliged to respect, protect and fulfil. Article 3 and 18 of the CEDAW Convention clearly shed more light on "legislation" as an important element to ensure the realization of individual woman's human rights and freedoms on the ground of "equality with men". In as much as Nigeria is a state party to these international and regional Conventions and treaties, it is bound to respect, protect and fulfil these testaments.

Nevertheless, the tensions arising from the contradicting approaches to the rights of women in customary and international laws have made it easier for the rights of the widows to be threatened rather than being realized. This is because male-dominance still remains strong in the Nigerian legal system and in view of that much Yoruba customary law and traditions are twisted in favour of men, even though it is contrary to what section (41)<sup>5</sup> of the Nigerian Constitution provides for both sexes. Particularly, customary laws and rules of each Yoruba states which determine the rights of inheritance of assets and property of the dead husbands have positioned the widows in a tricky situation.

In light of these tensions and contradictions, it has become difficult for the Nigerian government, as a duty-bearer, to situate the international legal norms within the local contexts of power of men and coupled with the way some Yoruba communities often conceive the widowhood rites. Widowhood rites in some Yoruba communities have been thinly reviewed. A few changes are being observed due to the influence of Christianity, increased number of working women, civilization, urbanization and migration (Menon 2000: 76; Ewelukwa, 2002: 459; Iwobi, 2008: 52 ). Meanwhile, as noted earlier, the outburst of intense mourning, aimless periods of crying, property grabbing, hysteria and mourning rites are still observed.

Despite the fact that widowhood rites infringe on women's rights, international human rights norms and national laws are yet to find a middle-ground to protect the rights of Yoruba widows. Given this existing challenge to strike a balance between human right frameworks and cultural norms, I agree that appropriating human right ideas to Yoruba social context might offer a relief for Yoruba widows, if concerned actors have the capacity and political will to give it what it takes in South-Western Nigeria. The next chapter will take this argument further.

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<sup>5</sup> Section 41 of the 1999 Constitution provides protection for protection of all citizens from discrimination based on community, place of origin, ethnic group, sex, religion or political opinion.

## **Chapter 5**

### LOCALIZING HUMAN RIGHTS OF WIDOWS IN SOUTH-WESTERN NIGERIA

#### **5.1. Introduction**

As discussed in earlier chapters, the debate on widowhood practices in Yorubaland is quite challenging because of the elements (cultural, social, legal and historical) surrounding its existence. Conceptually, the differentiation between men's and women's roles in South-Western Nigeria, as with other regions, has been framed as a tool of power dynamics that eventually translates to superior social relationship in favour of Yoruba men. This greater leverage given to men over women has resulted in discriminatory and inhumane treatments experienced by Yoruba widows through humiliating mourning rites, levirate or forced-remarriages and dispossession of their late husband's property and estate. All these amount to infringement of women's rights. However, the incompatibility of universal rights of widows with Yoruba customary laws has further complicated the issue. It is a difficult issue because human rights ideas are not in conformity with the existing relations of power and gendered ideas of Yoruba community. It is on this note that this chapter attempts to explain how localization of rights frameworks could work to resolve the plight of widows at the local level.

#### **5.2. Translating Widows' Rights into Local Reality**

Translating the universal rights of widows and international laws and connecting them with local ideas and values involves challenging arguments regarding cultural norms, ethical sensibilities and gendered ideas of communities. More importantly, translating women's human rights into local ideas and national values needs a progression and legitimacy. Simply put, situating the rights frameworks within local contexts needs to be gradual and is also expected to fit into the system of cultural meanings in order to be embraced and recognised by the local communities. In light of this, culture is an important element that can be used as a legitimate tool in advocating for women's rights.

The use of culture as a legitimate tool for translating international women's human rights into a local setting is inevitable (Merry, 2006a, 40-43; 2006c: 12). Merry argues that culture can serve as a tool to frame and claim women's human rights.

In line with Sally Merry's perspective, An-Na'im (in Marks and Clapham, 2004:395) also conceded that human rights are typically undesirable and unrecognized by people outside the cultural legitimacy. This implies that human rights ideas will not gain desirable recognition if they do not have elements of cultural meanings that are appealing to the social context of each local community around the world. Further, many arguments have weaved into this standpoint that in order for women's human rights to be culturally legitimate, they must be adapted into existing normative structures and ways of thinking (An—Na'im, 1992b; Ignatieff, 2001). For example, An—Na'im, argued that human rights ideas in Islamic countries are most operative and adopted because they weave them into culturally familiar images and sources of authority through Islamic structures and approaches (1992b, 2002).

Concerning translation of human rights, Merry used "vernacularization" as a term of how local cultural practices are adapted into human rights ideas. Merry's prototypes of vernacularisation are replication and hybridization. Replication is defined as "a process in which the imported human right ideas remains largely unchanged from its transnational prototype", while hybridization is defined as a process that merges imported institutions and symbols with local ones" (Merry, 2006a: 44). If I link this approach to previously dominant cultural practices, the answer seems obvious. Let us consider the latter--- hybridization, as evolving human right ideas through which culturally familiar images and sources of authority permeate. It offers traditional ways of understanding relationships that exist between power relationships and local legal consciousness. Although, as An—Na'im also noted, there may be a dilemma of incompatible values that respects cultural differences and at the same time proclaims the potency of international standards (1992b; 2002).

In the context of widowhood rituals, reconciling the substance of Yoruba's doctrines with universal values of human rights as part of the available preferences is considerably better. This notion implies that the application of

human rights has to consider cultural differences. Reconciliation efforts may need to look for common ground in accordance with the Nigerian context, particularly in the areas of existing social relationships, power structures and multi-layered legal structures. In this sort of violence against women (widowhood rites), which is defined as human rights violation, I am aware that violence is somewhat peculiar to intimate relations between Yoruba men and women. Despite the fact that there may be a problem of incompatibility of values that understand common traditional elements (tribe and faith) in Nigeria, human rights ideas can still offer appealing notions and social change for thinking about gender relations, power structures and inequality if the concerned actors are committed to exercise their political will and capacity.

In line with Merry, I also support the claim that rights frameworks do not displace other contexts but complement a new pathway to the ways individuals and society think about problems (2006: 180). I do not mean that human right ideas are a tool for national “*otapiapia*” and “*gbogbounshe*” (cure for all) for all the problems plaguing the widows but there is a need to take on the human rights discourse through a “double awareness” capacity. Either from the top to the bottom or from the bottom to the top, we must also ensure that the middle is not rotten. Finding a middle-ground by which Yoruba traditional elements and the rights framework can co-exist is possible although the adoption of human rights ideas does not happen spontaneously or easily. It requires a gradual process in order to allow the emergence of a new sense of self that integrates rights.

Localizing human rights ideas need strong institutional support. This is because it also can help raise the consciousness of Yoruba widows in knowing their rights. One of the dominant concerns of taking gender-based violence cases to the attention of legal system, for example, is the “victim’s and perpetrator’s encounters” (Merry, 2006: 183). In Nigerian context, interactions with the state actors (police officers, prosecutors, judges, etc) and non-state actors (human rights activists, feminist advocates, human rights NGOs, communities, chiefs, local elders and so on) affect the extent to which a widow might be willing to take this new identity (ibid.: 182). There is much to say here but this present research is concerned with the crucial roles the state institutions and non-

state actors should play in the widow's rights subjectivity. Therefore, a widow's willingness to take on rights depends on her consciousness and experience, along with how the state institutions and communities attend to her plight or treat her.

More importantly, turning to the Nigerian legal system for help could be a difficult decision, in which the practices of a multi-faceted legal system and state actors themselves are critically important. This is because of the challenges faced by widows and national efforts within the traditional sphere. These are intensified by the fact that both the legislative and judicial arms in Nigeria are dominated by males and are innately patriarchal in their stance. The situation renders both the legislature and the courts insensitive to the harsh realities of widowhood in Nigeria and undermines the legislative measures or judicial pronouncements designed to protect the rights and safeguard the interests of the widows (Iwobi, 2008: 40)

Drawing from Merry's and An—Na'im's conceptions of vernacularization and cultural legitimacy respectively, I also agree that the potency of these conceptual positions can apply to local reality in Yorubaland, if they are situated within local cultural terms. This new terrain may be challenging, but offers a relief for women to be protected from violence. Therefore, making new metaphors of egalitarian gender relations on the ground of negotiation and responsibility through vernacularizing process may help strike a balance between gender-based violence and its legal regulation in Yoruba domains.

## Chapter 6

### CONCLUSION AND RECOMMENDATIONS

#### 6.1 Main Findings and Conclusions

Based on the foregoing discussion, the main conclusions of this study are as follows. Widowhood practices in Yorubaland are to be seen as hybrid discriminatory practices shaped by social-cultural, religious and economic factors, private-public dichotomy and are deeply rooted in structural relationships of unequal power existing between Yoruba men and women. Conceptually, widowhood practices have strong bases in gender-based violence, gender relations and multi-faceted legal understandings emanating from customary laws, national legislations and international human rights norms. These seem contradictory to each other in terms of applicability and potential to realize widows' rights. Because the effect of the widowhood practices on women's existence as human beings contravenes the fundamental human rights as documented by the 1999 Constitution of the Federal Republic of Nigeria, treaties and other relevant international legal instruments, it amounts to an infringement of widow's rights.

Determining the fate of the Yoruba widows through national efforts and harmonized legal interventions in order to eliminate the widowhood rituals have been uphill tasks. This is because the political, traditional and cultural cleavages and customary law in Nigeria constitute barriers to the law-making process. This paper also showed that widow's rights are currently emerging and making an important contribution to international reform projects concerned with violence against women such as widowhood practices. The rights ideas seem well placed together with Yoruba cultures to diagnose, analyse and address the plagues of widows if tailored to local social context, women's equality and other important elements.

Remarkably, however, there are still scenes of debate and contestation between relativists and universalists concerning the appropriation of human right ideas in local terms, because relativists see human rights approaches as grave threats to the social fabric and a challenge to the social order. Vernacularizing

rights ideas into local terms in the Yoruba context will take time before it gains ground. But this adoption process depends on appealing responses to Yoruba's traditionalism which will still need a further informed research as time goes on.

Other central conclusions of this study relate to:

- (i) Individual responsibility
- (ii) The role of international legal instruments
- (iii) Institutional responses to widowhood practices
- (iv) The obligations of the Nigerian state
- (v) A strategy to ensure that the widowhood rituals are reframed in human rights terms.

First, the grief of the widows in several communities in Nigeria is still growing. The multiplicity of Yoruba cultures and the male-dominated nature of gender-relations have prevented effective law reform and concerted support for change. The inflexible social and political problems of the Yoruba states, political instability of government, and the absence of women in key decision-making bodies might have also prohibited telling discussions on the plight of widows. In spite of the structural obstacles to the advancement of rights of women in Nigeria, I feel much still depends on widows themselves.

Second, the global human rights system appears to provide some hope. CEDAW clearly condemns all forms of discrimination against women and directs state parties to "take in all fields, in particular in the political, social, economic and cultural field, all appropriate measures, including legislation, to ensure the full development and advancement of women" (Art.3). Similarly, the Maputo Protocol expressly condemns "discrimination, harmful practices and violence" (Art. 1) and enjoins state parties to enact and implement appropriate legislation (sub-section 1b, Art. 2(2) to curb all sorts of harmful practices and discrimination. Further, CEDAW obliges state parties to take all appropriate measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary....."(Art. 5a). The degrading widowhood rituals come under the rubrics

of "harmful traditional practices" already condemned by the Committee on the Elimination of Discrimination Against Women.

Translating the CEDAW and Maputo Protocol into practical realities for Yoruba widows remains a difficult task due to basic institutional and enforcement problems. Persuading the Committee to characterize the experiences of widows as a serious violation of human rights may prove to be problematic. This means that widows still have a long way to go in realizing their rights. With growing changes in Africa, carrying out human rights reforms in a locally-relevant context is possible but there is also a need to take cognisance attention to the tension between the positions in African communities, "as part of the continuous process of negotiating ever-changing, and interrelated global and local norms" (Cowan, Dembour and Wilson, 2001: 6)

Clearly too, we should note that whether the rights-layer framework stands or not, it hinges on the institutional response that the widows receive. Drawing from the rights conceptions and the existing plurality of local voices in Yorubaland, I feel that if the local actors do not ignore the plight of the widows vis-à-vis the reframing process of human rights ideas into Yoruba's local circumstances, the rights framework will be reinforced. If not, the reverse will be the case. Merry also confirmed that translation requires social changes in the "form and presentation of human rights ideas and institutions" (2006: 220).

Third, Chapter four explained that the customary phase, colonial experience and post-colonial social, economic and political structure changed the gender roles and relations of present-day Yoruba societies. This has resulted in some of the contestations of the prevailing laws. Chapter 2, sections 15, 17 and 42 of the 1999 Constitution prohibit discrimination and promote equality and justice. This implies that Nigeria is obliged to respect, protect and fulfill these laws for her citizenry irrespective of sex.

But the very fact that these provisions are applicable in equal measure to both women (widows) and men (widowers) is a flagrant discrepancy with reality, since it is widows that fall victim to various Yoruba traditional practices. Efforts to salvage this situation at national level failed as many key state actors began to pursue the matter in a narrow-minded and egotistic way (male-

dominant power and control, shaping gendered selves and legal regulations). Thus, they are incapable to shape the consensus necessary to adopt relevant laws for the widows. The enactment of the law has been polarized with a male-driven agenda and any effort to frame the law in gender-specific terms has been opposed by a strident male lobby (Iwobi, 2008:81).

Therefore, whether vernacularizing Yoruba's traditional practices is the most effective approach to reframe widowhood rituals, I believe it is still an open question that can be taken further and even beyond the scope of this research. So, I feel that the evils associated with the harmful widowhood practices cannot go away if left unattended to. Effort to translate international women's rights law into the local context will bring the gradual changes needed, with the help of local Chiefs, Obas, community elders, grass-root leaders, village groups, local NGOs and state actors, until all discriminatory practices will be eliminated.

## **6.2. Recommendations**

The research findings above have shown that widowhood rites violate the rights of women and that every effort taken to discontinue these practices has failed. How can we then make progress in reducing or eliminating the widowhood rituals that I have described as an infringement of widow's rights in Yorubaland? This is a herculean task and hitherto I feel that it can be lightened by the conceptual frameworks I have defended. Below are the proposals I feel that can offer helpful ways to reduce widowhood rituals in Yorubaland;

1. There is a need for community education and public awareness. Besides, emerging women's rights organizations, currently located in urban cities in Yoruba States, should extend their services to grassroots and local women by embarking on mass rights awareness education, providing free legal advice and shelter for the victims. Emphasis should be on local adaptation and messages must be conveyed and presented in Yoruba terms that are understood. Through this, individuals will have confidence to wake-up from the fears in the private realms and show willingness to adopt a human rights consciousness.

2. We should begin to appropriate relevant legal frameworks, law reforms and the policies on widowhood rituals prevention across sectors and communities, providing training and raising bottom-up initiatives. Further, let us consider the effectiveness of the institutional responses from police, courts, judges, prosecutors and other relevant state institutions and non-state actors (NGOs, INGOs). This is important to reinforce the willingness of widows to make their claims known to the appropriate institutions. Taking their claims seriously is very important to the success of their rights consciousness as well. Institutional response needs to engage non-state communities and actors in dialogues about law reforms in an interactive manner.
3. To localize the human rights ideas in the relevant social context, there is a need to avoid counter-productive arguments. In Yorubaland, for example, issues on pluralism and customary law have the potency to spur controversy. Sterling efforts should be placed on relatively uncontroversial issues first, before other controversies begin to get attention.
4. Widows should try to mobilize and enhance each other's capabilities. Indirect strategy through different capabilities may offer the best option in this regard. For example, women organizations cannot march stereotypically into any Yoruba community saying we are here to change gender roles and stop their late husbands' family members from enforcing widowhood rites. Even if the issue is a huge part of their programmes, they would typically need to pursue matters more indirectly, giving space to widows to have greater bargaining power and exit options through economic mobilization and empowerment. In addition to this, state action can complement this effort for wider support.
5. My personal experience and direct observation showed that men also can be a supporter of women's rights in this struggle. As with any great movement, the group seeking change relies heavily on the group from which they seek the change. Men are in positions of social, political and legal power. As a man might present a dowry to the woman's family at the time of marriage in Yorubaland, so he should present a gift or in-

heritance to/for his family before he parts. In view of this, the reversal or elimination of these long-standing rites need the support of many men in positions of power and influence, as well as the resources of organizations to educate and empower women.

## Appendix

Names and demographic characteristics of the people interviewed.

Names	Gender	Age	Educational Qual.
Widow A	Female	42	B.Ed
Widow B	Female	35	B.Sc, MBA.

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