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GLOBALIZATION AND THE RE-ESTABLISHMENT OF WOMEN'S LAND RIGHTS IN NIGERIA: THE ROLE OF LEGAL HISTORY

ADETOUN ILOMOKA*

INTRODUCTION

Today in Nigeria, as in most parts of Africa, women constitute a significant portion of active farmers and craftpersons involved in food and cash crop production and processing; they also shoulder disproportinate burdens of responsibility for providing care to family members. Yet their control over the land on which they live and work—a vital resource—is often precarious. Proclaimed limited legal rights deemed "customary," "land grabbing" by in-laws in the wake of the demise of husbands and fathers, and expropriation by the state continue to deprive them of secure access to shelter and livelihoods as they struggle to fight this dispossession with the tools they have at their disposal. What are the origins of this dispossession and who are its agents? What strategies have been employed to combat it and how can they be improved? Proceeding from a presumption that responsibilities for land-based activities should be matched by rights of access and control, this paper examines how feminist legal history and theory can contribute to reestablishing women's land rights in Nigeria and elsewhere. To understand the genesis of colonial and current patriarchal ideas and practices relating to women's land rights, we need to explore the social context and some of the significant historical events that determined access to land in this area.

The country currently known as Nigeria is located in the West African sub-region and comprises over two-hundred indigenous nations, ethnicities, and language groups. Many of these groups have long histories of trading with one another. Some formed parts of the large empires and kingdoms that have existed in the area since the eighth century. The widows' rights campaign and lobby in Nigeria between 1995 and 2005 is an excellent example of the adoption of a multi-pronged approach to addressing a specific issue.

* Assistant Professor, Dept of Women's Studies and Feminist Research and Faculty of Law, University of Western Ontario, Canada.

1. A term commonly used to refer to the practice of appropriation of property belonging to a deceased man by his male relatives often based on the claim that they are traditionally entitled to inherit such property if he has no male children or if they are too young to manage it.

2. The widows' rights campaign and lobby in Nigeria between 1995 and 2005 is an excellent example of the adoption of a multi-pronged approach to addressing a specific issue.
century AD, while some lived in relative isolation as smaller units. As a result, patterns of social organization in the area varied considerably depending on systems of production and patterns of trade.

The famous Trans-Saharan trade, and efforts to control the various sections of it, stimulated the formation of, and determined the fortunes of, large kingdoms that developed in the area between the eighth and nineteenth centuries. The advent of European explorers and traders on the West African coast in the fifteenth century heralded important changes that some scholars have termed the first phase of globalization.

In this paper, I use the term globalization to refer to the process of international economic and social integration, which dates back to the fifteenth century and is characterized by production linkages that created trans-continental production units or systems. While international trade relations, like the Trans-Saharan trade, were nothing new, new patterns and systems developed between the fifteenth and nineteenth centuries. In this period, slave labor from Africa produced raw materials for Europe's budding industries on South and North American plantations. Mass-produced industrial goods were then exported around the world in expanding and increasingly integrated networks that culminated in the establishment of colonies in Africa, Asia, North America, and South America. West Africa during the first phase of globalization, between the sixteenth and nineteenth centuries, was mainly a source of slave labor. In the second phase, from the late nineteenth to the early twentieth century, the slave trade was abolished and there was a decisive shift to trade in agricultural products and minerals. By the nineteenth century, large scale production of cash crops, such as kolanuts and palm oil, by hired or slave labor, was already a feature of farming in Southern Nigeria alongside the usual subsistence farming. As a result, although landholders were predominantly families and communities, some individuals connected to powerful families engaged in

4. Mabogunje, supra note 3.
5. Slave labor was also used within West Africa. For example, in the plantations established by the Portuguese in Sao Tome and other islands in the fifteenth and sixteenth centuries. A.F.C. Ryder, Portuguese and Dutch in West Africa before 1800, in A Thousand Years of West African History 217, 223 (Ade-Ajayi & Espie eds., Humanities Press 1972) (1965).
6. Although the internal and external trade in other goods such as ivory, gold, kolanut, peppers, guns, and palm oil continued alongside.
commercial farming and claimed large tracts of land for that purpose within communities.

I. THE ESTABLISHMENT OF COLONIAL INSTITUTIONS AND THE LEGAL SYSTEM IN NIGERIA

After three centuries of trade interactions between the peoples of this part of West Africa and Europeans, the area was colonized by European nations so they could establish greater control over production and trading activities. The British, in competition with the French and Portuguese, established their authority over Nigeria through the port and Kingdom of Lagos, which became a colony in 1861. The shift in the balance of political power from indigenous authorities to the British was a gradual one, effected through superior military force and the gradual introduction of new political, economic, legal, religious, and educational institutions and with the collaboration of local elites. The need to lower costs and make the colonies pay their way was a recurring theme in British colonial administration in the late nineteenth and early twentieth centuries and led to the adoption of what was later termed “Indirect Rule” by Lord Lugard.7 Under this system of administration, the British utilized existing local institutions to govern, theoretically interfering with them as little as possible. However, where they could not secure the cooperation of local rulers, they used the threat of military force to subdue them or deposed and replaced them with more cooperative persons. In this way, “traditional” institutions of governance and personnel retained their visibility and relevance in the early years of colonial rule.

One of the first acts of the new colonial government in Lagos in the first quarter of 1862 was to establish new courts.8 These courts were an important means of exercising jurisdiction over natives in disputes between Europeans and natives as well as disputes exclusively between natives. The corollaries of indirect rule in the sphere of law were: the recognition of native law and custom of the different ethnic groups in Nigeria and the continued operation of traditional systems of dispute resolution—supervised by British officials, or new native courts established by the colonial administration. In matters involving

7. Lugard was a British Military Officer who served for several years in the area and eventually became the first Governor General of Nigeria in 1914.
8. These were the Police Magistrates Court, the Slave Court, and the Commercial Courts, which dealt largely with issues considered a priority—Crime and Debt. See OMONIYI ADEWOYE, THE JUDICIAL SYSTEM IN SOUTHERN NIGERIA 1854–1954 (1977).
natives and land matters, these new courts ascertained and applied native law and custom. This was done through a process of taking evidence from expert witnesses who were from, or knowledgeable about, the area in question. Native law was thus a matter of fact to be proven in court. The legislation recognizing this "customary law" typically provided that

[n]othing in this Ordinance shall deprive the Supreme Court of the right to observe and enforce the observance, or shall deprive any person of the benefit of any law or custom existing in the said Colony and Territories subject to its jurisdiction, such law or custom not being repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by necessary implication with any enactment of the Colonial Legislature existing at the commencement of this Ordinance, or which may afterwards come into operation. Such laws and customs shall be deemed applicable in causes and matters where the parties thereto are natives of the said Colony or Territories, and particularly, but without derogating from their application in other cases, in causes and matters relating to marriage and to the tenure and transfer of real and personal property and to inheritance and testamentary dispositions, and also in causes and matters between natives and Europeans where it may appear to the Court that substantial injustice would be done to either party by a strict adherence to the rules of English law.

The supervisory role of the new colonial courts thus gave them important powers over interpretation of native law and custom. Over the course of one century, in a time of tremendous flux, contradictory accounts of custom and de-contextualized statements of it gave the courts the power to determine what customs were applicable.

It is within this context that we will examine two cases that exemplify gender struggles over land and that gave rise to considerable commentary in the first decades of the twentieth century, when new ideas on law and legal institutions were being established. The first is a landmark case from Lagos involving a family that represents, to some extent, the new indigenous elite in that town, while the second is a case from Epe, a Yoruba town about 70km from Lagos.

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9. I use the terms 'native law and custom,' and 'customary law,' which is the more modern label, interchangeably.
10. The Supreme Court Ordinance 1876 (1908), Cap. (3), § 19 (Nigeria).
II. COLONIAL TRANSFORMATIONS: THE EMERGING COMMON LAW ON WOMEN’S RIGHTS TO LANDED PROPERTY IN SOUTH WESTERN NIGERIA 1861–1931

The case of Lewis v. Bankole is considered to be the locus classicus on the nature of family property and the rights of women to inherit and acquire beneficial interests in it under Yoruba native law and custom. The material facts of the case are as follows: Chief Mabinuori died intestate in 1874 leaving five sons and seven daughters. In his lifetime he had lived with his wives and some of his children on a large piece of land, on which he built a main dwelling and two smaller dwellings for his wives. This was the main family compound. On another piece of land he owned, he had built two houses, one for his eldest daughter and another for his eldest son, in which they lived with their families. On his death, his eldest son, Fagbemi, became the head of the family and acted as such, despite having an older sister. Fagbemi was an affluent trader in his lifetime and passed on his wealth to his son who took on the role of family head on his father’s death.

By 1882, all the sons of Mabinuori were dead and his eldest son’s son, Ben Dawodu, claimed headship of the family and dealt with parts of the family compound without consulting or rendering account to the family. This included renting out shops constructed by his father or grandfather in the family compound to European trading firms. Ben Dawodu’s actions were called into question by his aunts and the rents from the shops were redistributed more equitably. On his death in 1900, two of his aunts, Mabinuori’s daughters, took over the management of the land, receiving rents from the shops. In 1905 they entered into an agreement to lease one of the stores on the land to a European firm. Another grandson of Mabinuori’s, James Dawodu, objected, and in the absence of an accepted head of the family, the dispute escalated. As a result, this action was filed in court by a group of the deceased’s grandchildren, who were at odds with their aunts, who lived in the main family compound.

The plaintiffs sought a declaration that they were entitled, as grandchildren of the deceased, in conjunction with the defendants, to the family compound and that the family compound was the family property of the deceased.

11. [1908] 1 NLR 81 (Nigeria).
12. Id. at 82.
The court was called upon to decide two main issues: (1) Who was the head of the family and, therefore, had significant decision-making power in the family as well as responsibility for dispute resolution? Because the eldest persons in the family were female, the issue of whether women could be heads of families was specifically addressed; and (2) Who had rights to inherit family property and what was the nature of those rights under native law and custom?

The plaintiffs, comprising mainly a group of grandchildren, claimed that the property was family property, jointly owned by all members of the family, to which they should have access and user rights. On the recommendation of the initial trial judge, attempts were made to settle this family dispute out of court by electing a head of the family with the advice of some Lagos chiefs. The plaintiffs refused to accept the advice of the chiefs and the authority of their aunts.

The trial court found for the defendants on the grounds that the plaintiffs had acquiesced for a long time to the treatment of the various properties as separate property belonging to individuals in the family and not the family collectively. Acting Chief Justice Speed expressed the following view:

I have no doubt that the plaintiffs have native law and custom on their side. I mean native law and custom as it was understood and possibly applied 40 years ago, but I decline to say that it is existing native law and if it is I am confident that it is my duty to decide that it is repugnant to the principles of equity and to refuse to enforce it.13

The appeals court overturned this decision on the grounds that it was against the weight of evidence, which clearly demonstrated that the properties in question were understood and treated by all concerned as family property. The justices decided that the main issue in the case was which rules were applicable to family property among the Yoruba. Therefore, they ordered that the case be remitted back to the trial court to take evidence on the applicable native law. As was usual in these cases, the trial court then called on expert witnesses, or assessors, to give evidence on the applicable rules. The court could then take a decision based on the weight of the evidence before it. Six prominent white cap chiefs14 from Lagos were called in this case and agreed with

13. *Id.* at 86.
14. These were a class of chiefs in Lagos so called because of their mode of dress. They were acknowledged as the descendants of the first settlers in the area and were the heads of the major landowning families in the Kingdom of Lagos.
each other for the most part, with slight differences of opinion on specific points.

The Lagos chiefs called as expert witnesses were of the view that the eldest son or *Dawodu* should take over the father's compound as head of the family. Yet, when asked who should have authority over joint property and facilities in the compound (such as a well for water) following partition, they unanimously agreed that it should be the eldest child—in this case, a daughter. Later, in his judgment, referring to the totality of the evidence before him, the judge distinguished between who succeeded to the headship of a chief's family and who succeeded to the headship of other families. This may explain, in part, the seeming discrepancy in the opinions of the chiefs.

In response to further questions put to them by the court, the chiefs agreed that family property is held and used in common under the leadership of the eldest child but that where there were intractable conflicts in the family, the property could, and should, be divided up in equal shares between all the children, *whether male or female*.

Based on the evidence given in the case and the opinions of the expert witnesses and assessors, the Court declared and endorsed a number of rules pertaining to family property among the Yoruba in Lagos:

1. Under native law and custom, the *Dawodu*, or eldest surviving son of the deceased, takes over the headship of the family, but on his death, the eldest surviving child, whether male or female, is next in succession.

2. Family property does not imply equal entitlement of every single individual member of the family to occupation and use as equal owners or stakeholders. The family consists of branches designated by the children of a founder. The different branches of the deceased's family are represented per stirpes on the family council with each branch having one vote. There is no general right to build on any unoccupied part of the family property, nor is there a general right of ingress and egress to the property. The head of the family and the family council confers such rights.

3. Family property can be partitioned in the event of intractable conflict within the family.

4. Under strict native law, family property cannot be sold but it can be leased in consultation with, and with the consent of, all
members of the family council on which each branch of the family is equally represented.

The court, however, in strong dicta expressed the view that it had the power to order the sale of family property, including the family house, contrary to strict native law and custom, where it was of the view that such a sale would be advantageous to the family or the property is incapable of partition. The court indicated that this could be done by taking a decision on whether native law and custom is contrary to Section 19 of the Supreme Court Ordinance earlier referred to by Justice Speed.

III. BACKGROUND AND CONTEXT OF THE CASE

This case was filed in 1905, about forty years after Lagos was officially declared a British colony and as the impacts of the establishment of British administration in the area on the value of land were beginning to be felt. In the sphere of trade, commissioned agents of European trading firms occupied a strategic position in the international import and export trade that was taking place. The related service sector, which provided accommodations, food and clothing to these settlers, was also a sector in which Africans made fortunes. The case of Lewis v Bankole is thus an excellent illustration of some of these changes.

Mabinuori was formerly a slave, or domestic, who, through his loyalty to the King of Lagos, had acquired strategically located properties on Lagos Island, formerly occupied by Oshodi, who was loyal to the deposed King and exiled with him. He obtained Crown Grants for his properties between 1851 and 1868, thus establishing individual ownership or entitlement in a system that just a few decades earlier would have defined him as a tenant on the land, holding it subject to the rights of the King or the acknowledged landholding family in the area. He was able to take advantage of changes in Lagos, before and after the Treaty of Cession, when Crown Grants were made by the King and later colonial governors, and presumed to confer individual and absolute title to land. He built his wealth, which he could then pass on by virtue of his status as founder of a family. His son, Fagbemi, with his support, also took advantage of new trading opportunities in the town and built up his own wealth. He had the means to repair and improve the family

15. Lewis v. Bankole, [1908] 1 NLR 81, 103 (Nigeria).
16. The Supreme Court Ordinance 1876 at § 19.
property and to shoulder various financial responsibilities in the family when called upon to do so. He thus succeeded his father as head of the family with no dispute, even though he was not the eldest child.

Several historians have noted the importance of access to credit as a means for capital accumulation in this period, and that women had fewer opportunities of gaining such access, which skewed patterns of gender representation in various occupations, as well as access to wealth. Fagbemi's son, a grandchild of Mabinuori, with access to his father's wealth, claimed the position of head of the family even when he had much older aunts and siblings. The fact that grandchildren in this case challenged the authority of their aunts demonstrates the internal politics of the family and the shift in the basis of authority from age to wealth. The expert witnesses supported Fagbemi's headship of the family, but were unable to justify it passing to a grandchild and affirmed the pattern of succession to headship being based on age, not sex. Yet, it was unclear why age was not used in the first instance, in which case Fagbemi's older sister should have been head of the family.

Before this case, which commenced in 1905, several women had gone to court to challenge erosions of their rights to property in their individual capacity as well as on behalf of their families. Major landmark cases in this period involved women. For example, in Ajose v. Efunde, two women claimed property as inherited from their male relatives, said to have been slaves, or domestics, of a local landowning chief. The women were challenging the permanence of local institutions of slavery in this early colonial period, as Mabinuori did with greater success later. This case, although the main issue did not relate to the sex of the parties, indicates the sense of indignation and active assertions of entitlement that led to the legal actions being brought.

Several scholars and commentators agree that Lagos, as colonial headquarters, was a place of rapid transition as a result of significant migration. These scholars sometimes attribute the evolution of certain rules, which they deem unusual, to this peculiarity. For example, G.B.A. Coker—a legal scholar and a judge of the Supreme Court of Nigeria, who wrote one of the most influential books on Family Property Among the Yoruba in the 1960s, had this to say in his book:

18. A. Berriedale Keith & Smalman Smith, Tribal Ownership of Land, 1 J. ROYAL AFR. SOC'Y, 455, 455–61 (1902) (reporting judgment rendered in 1892).
The steps by which the female members of the family have come to be recognised as fully entitled as the male members to participate in the enjoyment of rights and interests in family property have been gradual. The evidence there is points to the fact that in the olden days, and according to strict native law and custom, women have no rights whatsoever in the family property. As Combe CJ said: "In early times the rights of the daughters were not the same as those of the sons, and I should be very much surprised to find that native custom of Lagos has so far changed that it is now recognised by natives that daughters have the same rights as sons in the land of their fathers.\textsuperscript{20}

One may ask to what evidence he refers and what constitutes "strict native law and custom" in two centuries of tremendous flux in this area.

Another case, emanating from outside Lagos but still within a Yoruba sub-group in Epe,\textsuperscript{21} demonstrates that these changes and challenges were not confined to Lagos. In \textit{Saka Agoro v. Barikisu Osi Epe and Adisatu Morenikeji},\textsuperscript{22} family property belonging to Sunmonu Agoro had been administered by the eldest of his five children, Saka, as head of the family for twenty-five years. Saka had sold some of the property without the consent of the family and without rendering account to them. Adisatu Morenikeji, one of his sisters, lodged a complaint with the local headman of the community, the Baale, and his council asking them to compel Saka to account for the proceeds of sale and sought a partition of the rest of the property between the children. Saka appeared before the Baale and Council and surrendered some of the proceeds of sale to them, which they divided amongst the remaining children. They also divided up some of the family land for distribution to the children. Adisatu then sold her portion to Barikisu Osi Epe. Saka sought to set aside the sale on the grounds that he was the head of the family and that he did not consent to the partition. The case was heard by Mr. Justice A. R. Pennington, who found in favor of the plaintiff. In his judgment, he noted that the defendant, Adisatu Morenikeji, "had no rights of inheritance in her father's property she only had a right to live in the property."\textsuperscript{23}

The defendants appealed to the Full Court with Pennington sitting once again with Mr. Justice Combe and Mr. Justice van der Meulen. The majority found in favor of the defendants on the grounds that the

\textsuperscript{20} Id. at 179–80.
\textsuperscript{21} A town about 70km from Lagos today; at the time in question, it was at least three days' journey by local boats.
\textsuperscript{22} Supreme Court Suit No. 324 [1920] (July 1922) NLJ 3.
\textsuperscript{23} Id. at 6.
judgment of the trial court was against the weight of evidence. The defendants had called four witnesses, who testified that the plaintiff was present at the partitioning of the family land and that he had received his share. The plaintiff adduced no counter evidence to support his claim that he had objected to the partition of the family property instead of acquiescing to it as the defendants claimed he had done. Justice Combe expressed his view: "That Native Law and Custom permits of the partition of family land when all the members of the family consent to the partition there is no doubt whatever." On the question of Adisatu's rights of inheritance in her father's property, the judge merely noted that the defendants questioned whether this was a correct statement of native law and custom, but that it was irrelevant to the determination of the appeal. The sole question on appeal was whether or not the plaintiff had consented to the division of the family property.

Mr. Justice Pennington, in his dissenting opinion, justified his earlier findings, revealing in his judgment that the Baale and members of his Council had visited him before and during the trial seeking to influence his judgment. As a result, he had no confidence in their impartiality and decided the case in favor of the plaintiff.

What is most interesting about this case is the commentary and discussion it provoked in Lagos, especially within the legal profession, on the rights of women to inherit property. A partial record of this debate is given in a lengthy discussion published in one of the first law journals in the country from July to October of 1922. Although the appeals court did not think it necessary to deal with the issue of women's rights directly, the defendants' pleadings clearly stated their disagreement with the statement that native law and custom does not allow women to share in partitioned family property. The editor of the Nigerian Law Journal, Adegbesin Folarin, agreed with them and went on to write a stinging critique of the judgments of Mr. Justice Pennington:

the portion of Mr Justice Pennington's judgement in the Divisional Court in the case of Saka Agoro versus Busura Osi Epe and Adisatu Morenike reported in our last issue which reads: "Adisatu Morenikeji had no right of inheritance in her father's property, she only had the right to live in the property" impelled a dispensation with all formality and punctiliousness. This doctrine so industriously propounded time after time by Mr Justice Pennington whenever any action relating to women's rights to property comes before the Court is not only listened to with bewilderment by the native community

24. Id.
owing to its exoticism but it is tremulously apprehended that if it is
allowed to be imbibed by the male sex of this clime its germination
will have no other result but the pernicious severance of the sacred
tie which binds a family together...25

Folarin goes on to argue that native law and custom recognizes
equality of rights between male and female children. Citing a number
of examples, including that of Madam Tinubu of Lagos, as evidence of
the recognition of female children as heads of households in
Yorubaland, he notes that headship does not derogate from the right of
members of the family to participate in decision making by a majority
vote. He comments on the misuse of the property by the elder brother,
and purported head of the family in this case, and the recognition
by the Baale’s council (as the court of first instance) of the justice of the
defendants’ claims, which were clearly motivated by indignation at the
brother’s behavior.26 This editorial triggered a response in the next
issue of the journal from another lawyer, Olayimika Alakija, who, in a
lengthy article citing various authorities, including Lewis v Bankole,
supported the position of Mr. Justice Pennington on the issue of wom-
en’s rights to property as well as on the broader issue of the nature of
family property and the powers of the male head of the family to man-
age it.27 In a rejoinder, the editor of the Nigerian Law Journal analyzed
the cases cited by Mr. Alakija, giving reasons for his disagreement with
the author. This triggered a response jointly authored by Mr. Alakija
and Mr. Justice Pennington and a final rejoinder by the editor in the
October and November issues of the journal.

Yet, two years later in 1924, it was still being stated as a settled
principle of native law that “Females cannot inherit land, they can only
have the right to stay in the house. A female has no right to bring her
husband to live in the family house, but she does not lose her right to
return to it by marriage. Her children have the right.”28 As was pointed
out in the appeal of this case and by commentators such as Coker
thereafter, given the nature of family property and the general rule
that it was inalienable and not to be partitioned, the right of residence
of all members of the family was in a sense a right of inheritance. Once
that rule regarding alienability and partitioning started to change, fe-
males had the right to consent to alienation and to share in the pro-

26. Id. at 4.
27. (Sept. 1922) NLJ 2–3.
28. Lopez v. Lopez [1924] 5 NLR 50, 53 (Nigeria) (the court referencing and agreeing with
the evidence of assessors in the earlier nineteenth century case of Omoniregun v Sadatu [unre-
ported]).
ceeds of sale, as well as the right to a share of the partition, as was established in the Agoro case.

Coker notes that the only difference between males and females in relation to family property is that males can bring their wives to live in the family compound/house, but that females are not entitled to bring their husbands to live there.29.

These cases and many others demonstrate that it was not unusual for women to challenge attempts by male relatives to monopolize or misuse family property. They also demonstrate how various interest groups, with their different understandings and status or power in society, participated in the restatement of customary law in Southwestern Nigeria in the late nineteenth and early twentieth centuries and which views came to be dominant. Female litigants, their male supporters, and some lawyers and judges in the colonial courts were all participants in the restatement of customary law, but the processes underpinning the definition, recognition and continuation of specific laws and customs were skewed against women. Many assertions of entitlement did not get to court but were trumped early on in the process of assertion. Females were rarely given voice as expert witnesses, assessors, or lawyers, nor did they sit on the benches of native or colonial courts. Most of the early and influential legal scholars were also men, largely because of their privileged access to colonial education.

The legal discourse on family property that emerged in this period also neglects the instances where women were the source of family property and the issue of the entitlement of their daughters to inherit was not raised. It fails to address changing definitions of the family and relations within it, which are the inextricable building blocks of the political structure. This discourse does not, therefore, overtly acknowledge that patterns of family property holding are a reflection of emerging patterns of economic activity and land use in the shift from labor intensive subsistence and cash crop production to capitalist agriculture and mining and the new system of administration that supported this shift.30

The extent of the impact of the restatement of customary law on women's rights and position in many African societies has not been sufficiently investigated by feminist and legal scholars and practitio-

29. COKER, supra note 19, at 181.
30. Important aspects of this shift were the emergence of a service sector attuned to the needs of new trading and state institutions and a rentier class which derived income from the sale and renting of property.
ners. As a result, they are still grappling with which strategies to adopt in their advocacy. In doing so, they use modern tools, which seem to advance the cause of women. These modern tools are, however, often still the "Master's Tools" and the failure to assert their agency and re-fashion them to suit the task at hand makes that task unnecessarily strenuous and the work teams weak.31

IV. REVISITING AND UNDERSTANDING LOCAL HUMAN RIGHTS STRUGGLES

The evidence from these cases is that women felt a sense of entitlement to live in or return to their fathers' houses and to inherit property equally with their brothers as members of a family, based on custom and law in these communities. The clear, and even forceful, acknowledgement of this right by chiefs, brothers and commentators in the late nineteenth and early twentieth centuries in disputes and court cases is an important statement of native law and custom. The various justifications advanced for rules restated by expert witnesses, who were invariably male chiefs and who were most likely to have a vested interest in supporting the development of male privilege and power, were not analyzed with regard to the historical context of the evolution of the rules or the justice of the situation. In taking personal and legal action, the women of this period were asserting their human rights and adopting a rights-based approach to social change and development. This was however, not an approach concretely supported by the patterns of economic and social change at this time, nor was it necessarily endorsed by the courts in their restatements of the law.

CONCLUSION

Today, with the benefit of knowledge of legal history, groups involved in advocacy for women's rights to land need not parrot these erroneous or historically specific conceptions of native law and custom, juxtaposing them to modern constitutions and international conventions on human rights. There is no single rights-based approach to social change and development. Informed and incisive analyses of the

31. This is evident in the relatively recent case of Mojekwu v. Ejikeme, [2000] 5 NWLR 403 (Nigeria). In this case, the daughters of the deceased challenged the idea that women could not inherit real property and that it should have been passed on, instead, to the closest male relative in line. They won on appeal and the judge ruled that the relevant native law and custom was repugnant to natural justice, equity and good conscience.
evolution and operation of laws and legal institutions need to be advanced by feminist lawyers and scholars at both a local and a global level and popularized amongst the legal profession—particularly judges. The local should strengthen the global and the global should not negate the local. Equality and egalitarianism are not new concepts in many societies, and substantive issues of justice need to be confronted by women as active and informed participants and agents of social change. As my analysis of these two cases has shown, the arena of land law and rights was a contested space in the early colonial period. Women and so-called slaves were actively involved in these contests and challenged their designation as second class citizens, seizing opportunities presented by economic and political changes to assert and maintain entitlements.

In the face of the current onslaught of neo-liberal policies and laws relating to land tenure in Africa, there is much that we can learn from this period in these and similar case studies. The nineteenth and early twentieth century women who challenged redefinitions of their rights of access to and control of land were forerunners in the fight for women's land rights and human rights. Their legacy should be understood and improved upon as an important part of the development of a local culture of human rights in Nigeria and elsewhere. Their struggle represents resistance to what one scholar has termed socio-cryonics—a freezing of culture in historical space and time characteristic of colonialism in Africa—32—and the negation of women’s agency in modern society.
