

Harmful Traditional Practices: Eliminating Discrimination in the Burial of Childless Adults.

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Abstract.

Nigeria has many ethnic groups with diverse traditions and customs like female circumcision, widowhood rites, disinheritance of widows, etc. Some of these traditions are discriminatory, harmful, and repugnant yet they are accepted by inhabitants of those places. Tradition of a people is a way of behaving, thinking or doing something that has been followed by a particular community, society, family for a long time. One of such traditions is the practice of burying childless adults in the evil forest called 'Abada'. It exists in Egbema in Imo and Rivers State of Nigeria. It is the focus of this paper. It is a practice that needs to be eliminated because of the negative social, physical, mental and psychological impact on the family and the childless person; it is stigmatizing, discriminatory and against human dignity. It is unconstitutional by virtue of Sections 17 and 42 of the Nigerian Constitution and United Nations Treaties like the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights etc. Though these international instruments provide only for protection of women, it can also be applied to the men who suffer harm from the practice. It is an area that has not been delved into hence much of the information used was through oral interviews of people in the community. It will serve to bring this harmful practice to the fore and with advocacy and enlightenment, provide a platform for ensuring that it is eliminated.

1. Introduction.

Nigeria has around 250 ethnic groups and each group has an extensive and diverse list of traditions and customs that they live by. Some of these traditions and customs can be considered harmful, strange, outrageous, obnoxious and even repugnant

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yet they are totally normal and acceptable for inhabitants of those places.

A custom is a commonly accepted manner of behaving or doing something in a particular society, place or time.² Customs are useful in arranging, managing and controlling a lot of social and community relationships. Traditions however involve a type of life, behavior, norms. It is the transmission of customs or beliefs from generation to generation.³ There are a number of traditions that have been specified by law, just like customs. Traditions generally cover a much wider field than the laws. They can be verbal or written. They are more powerful than customs and they also play an important role in arranging and controlling social life. It is a way of behaving, thinking or doing something that has been followed by a particular community, society, family etc for a long time. **A custom**, if passed down for generations, can become a tradition; therefore, **tradition** is a custom that has been transmitted through generations and become entrenched as a way of life of the people. Many times, the people still practicing it cannot trace the origin or the rationale for a particular custom or tradition. All they can tell you is that it has been in existence from time immemorial, from their fore fathers. They may not agree with the tradition but because it has become entrenched in the society, they continue in it because of the fear of change.

Nigeria has a large number of cultural practices such as witch hunting, female circumcision, widowhood rites, disinheritance of widows, tribal marking and scaring, rites of passage (for instance from childhood to adulthood), initiations, marriage ceremonies, etc and a number of others which seem strange to outsiders but is accepted by the people of the place where it is practiced as the norm.

One of the customs or traditions as it were is the practice of burying childless adults in the evil forest called 'Abada'. This tradition exists in Egbema in the South East and South South region of Nigeria. Thirteen of the sixteen villages in Egbema are in Imo State while three are in Rivers State of

² <<http://pediaa.com/difference-between-custom-and-tradition/>> (December 10, 2015) Visited 30 May 2018

³ *ibid*

Nigeria. The focus of this paper therefore is the appraisal of this harmful, obnoxious and repugnant custom/tradition of the people with respect to the burial of childless adults. It is a practice that is steeped in tradition and regardless of modernization and deeper knowledge into the reasons for childlessness, it still continues unabated. It is even used as a curse when they will tell someone that they will surely throw you away in 'abada enwe nwa'-abada that has no child.

It is a practice that needs to be eliminated because of the negative effects on the family and the negative health and psychological impact on the childless person who has grown to old age. It is a tradition that fails every test of repugnancy and in examination, lacks argument to support its continuance or even justify starting it.

All human beings are expected to be treated with respect and dignity. That is why Section 18 of the 1999 Nigeria Constitution, dealing with the fundamental principles of state policy reflects the nation's commitment to equality of all irrespective of race, sex or gender.⁴ The treatment of childless persons in this study area is disrespectful and undignified in many ways but by far the worst is how they are treated on death. One may argue that it does not matter to them anymore but they would have gone through a lot of physical, mental and psychological trauma prior to death. The stigma and indignity including abuse and emotional trauma is then suffered by their surviving relations. Discussing with the elderly childless person leaves a sour taste in your mouth and a lot of emotional upheaval. You come in contact with the agony they have been suffering over the years from the family, neighbours and the community; you also come in contact with total acceptance of their fate on burial after death. Apart from the fact that they would have no children to carry out certain traditional burial rites, the sharing of their property by others (because according to the community, 'omedoye' i.e. he/she did not leave anyone or anything important behind), most of them are emotionally

⁴ Osokoya, I. O. (2008). *Contemporary issues in educational history and policy in Nigeria*. (Ibadan: Laurel Educational Publishers Ltd.)

crippled by the fact they will be taken to the evil forest as a final resting place.

This paper will examine the challenge of childlessness and the impact on persons affected. It will discuss the origin, implementation and impact of this tradition on the people in the study area and suggest ways through which it can be eliminated. Like most traditions, elimination is possible albeit slow especially if concerted advocacy, awareness and enlightenment campaign is carried out with wisdom. Concerted advocacy, education and Christianity will be good tools to ending this harmful, obnoxious and repugnant tradition. Where there is a will, there must be a way.

2. Childlessness, Causes, Effects and Impact.

Childlessness is the term for people - men and women having no children. It may be choice or as a result of medical or other conditions that cannot be controlled by the person. Whether voluntary or not, childlessness may have personal, social and/or political significance. The World Health Organization defines infertility as an inability of a couple to conceive within two years of regular and unprotected sex.⁵ Childlessness, according to the international Union for the Scientific Study of Populations (IUSSP) demographic dictionary, "refers to the state of a woman, man or couple who have been so far infertile"⁶

Katz and Katz⁷ had observed that in society where childlessness carries a strong social stigma and where children offer assurance of both personal immortality and old age insurance, infertility is always a serious problem for the childless women and I dare say the childless man also. Maquet⁸ made similar observation in his study of the Tutsi in Ruanda

⁵ World Health Organization, (WHO 2011), Infertility
<<http://www.who.int/topics/infertility/en/>> Visited 30 May 2018

⁶ Childlessness Encyclopedia of Population (2003), <
<https://www.encyclopedia.com/social-sciences/encyclopedias-almanacs-transcripts-and-maps/childlessness>> Visited 30 May 2018.

⁷ Katz S.S and Katz S.H. (1987). An Evaluation of Traditional Therapy for Barrenness, *Medical Anthropology Quarterly*, vol.1. No.94, pp.394-405

⁸ Maquet J.J. (1961) *The Premise of Inequality in Ruanda*. (London: Oxford University Press)

where the most cherished items are children and cows. Childless people are strongly stigmatized in Nigeria.

Throughout the world and particularly in African societies, the word “childlessness” sends interest to the ears of listeners and a sense of pity is immediately aroused in the mind. Children are regarded as great treasure to their parents, relations and their immediate community.

Many people suffer from childlessness for so many reasons such as drug abuse, hard drugs effect, contraception, numerous abortions, and some are genetically inherited.⁹ Medically, there are different causes and risk factors for couple’s childlessness. It has been said that infertility for men is most often caused by low or no sperm count and blockage of the tubes that transport sperm. Infertility in women on the other hand, is caused by a range of other factors such as problem with ovulation, blockage of fallopian tubes and physical damage to the uterus. Sexually Transmitted Diseases (STD), advanced age, smoking, and excess alcohol use are also mentioned as risk factors of infertility. However, a considerable number of people have limited level of knowledge about the medical causes of infertility. The problem is thus usually perceived as caused by other factors than medical ones. Some associate infertility with supernatural powers and others associate it with diseases or with the absence of reproductive organs.¹⁰ According to Nwapa¹¹ some couples attribute their problem of childlessness to the supernatural, the hope in God that gives children to remember them at the appropriate time.

Childlessness has major psychological and social implications for affected persons, especially in settings where fertility is highly valued. Not having children, whether voluntarily or not, contributes to a kind of invisibility and poverty in Nigeria and in Egbema, it is considered a curse. Childlessness evokes strong negative feelings among family

⁹ Rasak B., & Oladipo P., (2017) Childlessness and It’s Socio-Cultural Implication on Married Couples within Some Selected Yoruba Communities in South-West Nigeria, *International Journal of Innovative Social Sciences & Humanities Research*, vol.5(1), pp.42-54.

¹⁰ *ibid*, 45

¹¹ Nwapa, F. (1996). *Efuru*, (London: Heinemann)

members and the community. Procreation is the basic aim of marriage; for them, marriage and procreation are inseparable. Modernization has not weakened the deep rooted tradition of having a child as soon as possible after marriage.

According to Owo¹² having many children makes one feel contented and important and also usually respected by others for not being childless. Marriage which fails to produce children often end in divorce. Rita¹³ was married for five years with no sign of pregnancy. According to her, they loved each other and the man took good care of her. However, she said she had to make a difficult decision to leave him for another husband so that she would still have the chance of having children before she reaches menopause. She has two girls with her new husband. According to her, she is satisfied that she will not be tagged barren and would not be buried in *abada*. Janet¹⁴ got divorced after 20 years with her husband with no child. In her second marriage, she had four miscarriages before resigning herself to the fate of the childless in the community. According to her, the quest for a child led to her first divorce and the inability to carry pregnancy to birth led to the end of the second marriage. She has accepted her fate and now in her old age, has made it clear to her relations that she has no qualms about being buried in *abada* because the tradition must not stop with her. Her constant lament and emotional pain is the loneliness she is experiencing now that she is old. Mary¹⁵ is an industrious and prosperous fish trader who built her own house after childlessness led to her divorce. She is 64 years old now and her only regret is not having any child. She is aware of the fate that awaits her at burial and the fact that all she labored for will be shared among family members because she left nothing behind. She says she goes through a lot of anguish and wishes that the tradition will change even before her death. If she is buried in her compound, she believes that her memory will not die off and those who inherit her property will always

¹². Owo, C. (1994). *Introduction to Sociology*. (Enugu: Dulacs Press Ltd)

¹³. Surname withheld

¹⁴ Surname withheld

¹⁵ Surname withheld

remember that though childless, she did not allow it to impose limitations on her.

2.1. Effects of Childlessness.

Childlessness has major psychological and social implications for affected persons, especially in settings where fertility is highly valued. Childlessness has been regarded as a great personal tragedy, involving much emotional pain and grief, especially when it resulted from a failure to conceive or from the death of a child.

i. Psychological

People trying to cope with involuntary childlessness may experience symptoms of distress that are similar to those experienced by bereaved people, such as health problems, anxiety and depression ¹⁶Janet was hospitalized recently and had an emotional breakdown because there was no child to look after her. She had to rely on her sisters who had to take turns since they were all married with children.

ii. Political

Childlessness, especially in cases of royal succession, but more generally for people in positions of power or influence, have had enormous impacts on politics, culture and society. In many cases, a lack of a male child was also considered a type of childlessness, since male children were needed as heirs to property and titles. A family is believed to have left a successor or tangible legacy if there are children especially male children. In the case of burial in *abada*, a female child is accepted whether the child died before the parents on the other way round.

iii. Associated Stigmas

In a society that encourages and promotes parenthood, with its current social norms and culture, childlessness can be stigmatizing. The traditional idea that couples should reproduce and want to reproduce is still widespread in Nigeria.

¹⁶ Stearns, Peter N. (2009). *Sexuality in World History*. (New York: Milton Park, Abingdon, Oxon), p.18.

Childlessness is considered deviant behavior in marriage and this may lead to adverse effects on the relationship of the couple.

In Ghana, the stigma experienced by infertile couples does not occur only when they are alive, it also continues after the person's death. Couples without children are denied membership in the ancestral world. Rituals that confer membership in the ancestral world cannot be performed because it is the practice that the children of the deceased go to the bush to harvest a special stick known as the *kpiendaa* which is kept at the ancestral room after some rituals symbolizing that the individual has reached the ancestral world. This rite of passage is very important in the lives of all adults as it indicates the final transition of the individual to the ancestral world. The general belief is that there is another world after death and individuals who become ancestors will have the opportunity to live again. If this does not occur, it implies extinction of the family lineage and unrest for the soul of the deceased. Such souls are believed to wander about and will never reach their maker.¹⁷

iv. **Social and Cultural Impacts of Childlessness on Married Couples**

Socially, childlessness has also resulted in financial stress and sometimes ruin in societies which depend on their offspring to contribute economically and to support other members of the family or tribe.¹⁸ According to Ugwanyi¹⁹, the number of children a man has determines the socio-economic importance of the man. Childlessness demoralizes some of the affected couple's zeal to accumulate wealth, this is because they view that wealth accumulated would go to the community when they die, because of this, most of the couples squander their money while they are still alive. Also culture measures the political

¹⁷ Philip Teg-Nefaah Tabong & Philip Baba Adongo, (2013 Mar 21) Infertility and Childlessness: A Qualitative Study of the Experiences of Infertile Couples in Northern Ghana, <<http://www.biomedcentral.com/1471-2393/13/72/prepub>> Visited 31 May 2018.

¹⁸ Rasak, Childlessness and It's Socio-Cultural Implication on Married Couples within Some Selected Yoruba Communities in South-West Nigeria, p.46

¹⁹ Ugwanyi, (1999). *The Family*. (Enugu: John Best Press)

strength by the number of children a man has, childless couples are not recognized in the society, they find themselves in a political desert.

v. Discrimination after Death- Fear of burial in the evil forest

Discrimination can be said to be unfair treatment or denial of normal privileges to persons because of race, age, nationality, gender or religion etc. It is a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured.²⁰ Discrimination occurs when a person is treated less favourably than others because of characteristics that are not related to the person's competencies. It is a disadvantageous treatment or consideration; discrimination involves a form of exclusion or rejection.²¹ It is an abuse of a person's human rights.

The Nigerian constitution seeks to protect its citizens from abuse of their human rights and therefore enjoins equality and freedom from all forms of discrimination. The 1999 Nigerian Constitution²² recognizes the principle of non-discrimination as contained in the Universal Declaration of Human Rights and makes it the responsibility of all organs of government to observe and apply these principles. Section 17 deals with social objectives and provides in Sub section 1 that the State social order is founded on the ideals of Freedom, Equality and Justice. In furtherance of the social order, Section 17 (2) (a) states that every citizen shall have equality of rights, obligations and opportunities before the law; (b) the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced.

Section 42(1) states that a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

²⁰ Garner, B.A., (ed), Black's Law Dictionary 9th edition, (US, Thompson West Publishers, 2009)

²¹ <<http://en.wikipedia.org/wiki/Discrimination>> Visited 31 May 2018

²² Section 17 (3) CFRN, 2004

- (a) be subjected either expressly by, or in practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
- (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege of advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, religions or political opinions.

By virtue of Section 42(2), no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth. This provision can be made applicable to the treatment of childless persons because such a harmful practiced for their burial places is discriminatory and derogatory and can be termed an abuse of their human right to dignity of person.

These rights are however non- justiciable. It can be posited that at best the provisions provide a platform on which to check the constitutionality, reasonableness and compliance with customs that comply with natural justice and equity.

Some traditional practices like the peculiar burial traditions of childless persons are against the constitutional provision of non-discrimination and respect for dignity of persons. It is posited that the burial is discriminatory not only to the person but also on the family. This is so because other families discourage their children from marrying into such childless families because according to them, they are known for infertility. In addition to the above, the individual has to contend with the fear of burial in the evil forest. The stigmatization for him and his family even after his death is also a major psychological concern.

A study in Southern Nigeria found that the body of a deceased childless woman was often thrown into the bush or the forest be to eaten by animals because of fear of

reincarnation²³ Another study found that even if the earlier practice of throwing away infertile women in the forest no longer exists, their funeral becomes small-scale and quiet due to the absence of children to cover the burial expenses.²⁴ It is a common practice in Ethiopia for children to express their bitter sorrow carrying the ornaments and putting on the cloths of their deceased mother on the funeral ceremony. Childless peoples' funeral ceremonies are quiet not only due to the mere absence of children and grand children themselves, but also due to the reluctance of other people to go to the funeral. People do not find it worthwhile to attend the funeral of a childless person because there are no children of the deceased to observe who is coming to and who is absent from the funeral of their parents. There is a proverb that stresses this point:

My childless woman is dead; let's go to the funeral;

First I have to eat my lunch, and then prepare my dinner,

I will go thereafter; late and relaxed;

Who is there to observe my being late, herself or her child?²⁵

3. Reason for the tradition.

This custom/tradition in Egbema is one of the unwritten ones but it is practiced widely and diligently. To decipher the reason for it, recourse was made to some of the elders in the community. 87 year old Elder Eke²⁶ could not say exactly when it started but said it was what they met on ground even from his great grandfather. He said the burial culture has been in place from time immemorial and includes burial of anyone who dies

²³ Pearce, T. O. (1999). She will not be listened to in public: Perceptions among the Yoruba of infertility and childlessness in women, *Reproductive Health Matters*, Vol.7(13), pp.69-79.

²⁴ Hollos, M. et al (2009). The Problem of Infertility in High Fertility Populations: Meanings, Consequences and Coping Mechanisms in Two Nigerian Communities, *Social Science & Medicine*, Vol.68, pp.2061-2068

²⁵ Bayouh, F. A. (2011). Socio-cultural Perceptions of Infertility and their Implications: A Study of Women Experiencing Childlessness in South Gondar, Ethiopia, p.71 at < <http://bora.uib.no/handle/1956/5309>> Visited 31 May 2018.

²⁶ Surname withheld

with goiter, accident or a woman who dies while still pregnant. Such deaths are an abomination and if they are not buried in the evil forest (*Abada*), will have strong negative repercussions on the family and the entire community.

According to him, it is done so that the curse and stigma will be removed from the family and community. The burial of such a person in the compound means the childlessness will stay and continue visiting other members of the family. It will bring bad spirits to remain in the family and community. It is to terminate the curse of childlessness. Further to this, female relatives of the deceased are expected to put ash in small containers and put in every junction. While doing this, they are expected to make decrees that the affliction will not attach to her in her next life so that her wealth will not be inherited by others but by her own children.

Elder Dan who is a Christian narrates that the tradition has been in place from their forefathers. He was told by his grandfather that it was put in place because the elders say you must leave a seed and not leaving a seed is an abomination and act of disobedience which requires punishment. He said they met it being practiced but because of Christianity, he is of the mindset that it should be expunged completely but the process of expunging it will have to rest primarily on families. This he said is because the elders of the land presently were not the ones who put the tradition in place and so it will be difficult to get a consensus to stop it. This may be because of the fear of the negative repercussions from the ancestors. This could be in the form of short life span, stroke, childlessness on their family members and other calamities that may require cleansing of the land.

3.1. Perception of the effects of the tradition.

(a). There are three schools of thought concerning this tradition. There are those who believe that the tradition should stay because the elders who put it in place know better. These are the core traditionalists and many of them are not even elderly. Mr. Sunday²⁷ is vehement on the continuation and believes all the abominations being experienced in the

²⁷ Surname withheld

community can be traced to disobedience of this and other traditions. He does not seem concerned that it is harmful, obnoxious, repugnant, stigmatizing and outdated. He said all these pale into insignificance when compared to the harm that could come to the community. Mr. Martin²⁸ agrees with him and gave an example of a particular family that is now known for the sickness of stroke and early death; the curse is on the family because they refused to bury their childless brother in the evil forest. He said that even though they eventually exhumed the body and did the right thing, the curse had already set in. He refused to believe that the sickness is hereditary.

Those with this mindset were reminded that even after complying with the burial tradition, some members of the same family still experienced childlessness thereby giving a lie to the belief that such a burial will remove childlessness from the family.

According to this school of thought, parents must deter their children from marrying into such families because '*omedoye*', he/she did not leave anyone behind. The target is complete bareness. Again in this instance, children by adoption are not accepted as removing the curse or stigma.

Janet, an elderly childless woman surprisingly is in agreement with this group. She has accepted her fate and believes she should be buried there to save her remaining family members. Joseph²⁹ is sad about his lot in life and has also accepted his fate. He has given clear instructions to his family members not to change his burial place. He refused an offer to build a house for him because according to him, 'who is he leaving it for? Let the mud house remain so that after his death, it can be easily knocked down.' What a sad commentary on a person's life.

(b). The second group are the people who are ambivalent on the issue. They do not evince any interest either way. They believe where a person is buried is immaterial and that the living relations should 'manage' and bear the shame and stigma. Mary believes that since fortune of bearing children has not smiled on her, she has no reason to smile after death. According to her, if her female relations do the right thing, in her next life, she will be luckier. If they refuse to do the traditional thing, then they can take whatever comes to them later in life.

²⁸ Surname withheld

²⁹ Surname withheld

(c). The third group are interested in discontinuing/eliminating the tradition because according to them, it is stigmatizing, repugnant, discriminatory and anachronistic. They believe it is time for educated persons in the community to work with the numerous churches and Non-Governmental Organizations to fight this tradition. Elder Dan is in this category. He recalled a situation where the Anglican Church intervened and exhumed the body of the deceased and reburied in the church cemetery. The family is still alive, living well and many of them have children in their marriages. He believes if more churches could acquire land for cemeteries, they would undertake to bury affected members there. He also believes that change will come if families take the bull by the horn and bury their dead within the homestead in defiance of the tradition. When more people start doing it without negative repercussions, the tradition will gradually die off. Change must begin from families in the community because government may not be able to do it.

4. Legal Framework for discontinuing the harmful tradition?

Throughout the world, there are many different types of harmful traditional practices that violate the human rights of women. Some practices are endemic to a particular area of the world, while others are more widespread. Most of the prevalent and harmful practices that constitute violence against women and a violation of their personal dignity and human rights include the following: Son preference, female infanticide, disinheritance of female children, female genital mutilation, polygamy, wife inheritance and maltreatment of widows etc.³⁰

States are obligated under a comprehensive international legal and policy framework to enact, implement and monitor legislation on all forms of violence against women, including “harmful cultural or traditional practices.” The international human rights treaty bodies, in particular the Committee on the Elimination of Discrimination against Women, regularly call on States parties to adopt legislation to eliminate “harmful practices”.

The 1993 General Assembly Declaration on the Elimination of Violence against Women states that:

³⁰ UN (June 2010). United Nations Division for the Advancement of Women. (2009). Good practices in legislation on harmful practices against women, < http://www.stopvaw.org/harmful_practices_types_prevalence > Visited 1 May 2018

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.”

The General Assembly and other inter-governmental bodies of the United Nations have called on governments to develop and fully implement laws and other measures to eradicate harmful customary or traditional practices. They have also called on Member States to “review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles.”³¹

The Universal Declaration of Human Rights (UDHR): It provides a broad foundation for the protection of women against harmful practices. Article 1 provides that all human beings are born free and equal in dignity and rights. Article 3 states that everyone has the right to life, liberty and security of person while Article 5 provides that no one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment. Article 7 states that all are equal before the law and are entitled without any discrimination to equal protection of the law.

International Convention on Civil and Political Rights: Similarly, the International Covenant on Civil and Political Rights (ICCPR) 1966³² protects individuals from torture or cruel, inhuman or degrading treatment.

The preamble to the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

1976³³ acknowledges that human rights derive from the inherent dignity of the human person.

³¹. United Nations (2009), UN Report: Good Practices in Legislation on 'Harmful Practices' against Women, <<http://www.wluml.org/node/5868>> Visited 1 June 2018

³². The Advocates for Human Rights, (June 2010), <<https://www.oursplatform.org/wp-content/uploads/International-Legal-Framework-for-Harmful-Practices.pdf>> Visited 1 June 2018

³³ The Advocates for Human Rights, *ibid*

Article 3 declares that the States Parties must ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 12 protects the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Vienna Declaration and Programme of Action of the World Conference on Human Rights (1993)³⁴ in Section II(B)(3)(Para 38), calls for the “eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.”

Granted these provisions address only discrimination and harmful practices against women and children especially the girl child but this may be because they are the ones who face these inequities and indignities as mentioned in the United Nations treaties and covenants. In line with the harmful traditional practice under discussion in this paper, it is advocated that changes ought to be put in place to bring the men under the purview of these protective legislations. Most of these treaties and covenants were enacted many years ago based on information available then. In light of new information on harmful practices, there ought to be a system of review that will ensure the harmful practice is eliminated and all parties affected are protected. The burial in the evil forest for childless persons include both the childless male and female and there is therefore the need for protection of both sexes.

It is posited that even if the United Nations would repeal or amend these treaties and declarations to cover men, implementation in Nigeria will still be a challenge. The UN treaties serve as a guide to member states of the United Nations (UN) that ratify them and who are encouraged to domesticate them in their national laws so as to give the instrument force of law and enable victims come through those instruments to seek redress. Domestication of such covenants only applies to countries with dualist system of law like Nigeria and the United Kingdom. Because of this dualist system of law, international law is not directly applicable domestically; it must first be translated into national legislation before it can be applied by the national courts. It follows therefore that ratification is not enough; a national implementing legislation is required. Domestication in effect transforms the treaty into municipal or national law through a

³⁴ The Advocates for Human Rights, *ibid*

legislative process.³⁵ Once this is done, the treaty would occupy the same place occupied by other Nigerian statutes subject of course to the Nigerian Constitution.

As stated earlier, the Nigerian Constitution seeks to protect its citizens from abuse of their human rights and therefore enjoins equality and freedom from all forms of discrimination.³⁶ These rights are however non-justiciable. However, one of the landmark cases by the Supreme Court of Nigeria could be a precedent for challenging some of these practices. In *Ukeje v. Ukeje*³⁷ the Supreme Court voided the Igbo law and custom, which forbids a female from inheriting her late father's estate, on the grounds that it is discriminatory and conflicts with the provision of the constitution. The court held that the practice conflicted with section 42(1) (a) and (2) of the 1999 Constitution.³⁸

4. Eliminating the harmful practice.

Most harmful traditional practices are changed or eliminated mainly through dialogue and legislation where it is available. Legislation alone may be inadequate and therefore likely to fail in the bid to effect change. The practice of female genital cutting is used to demonstrate that rather than adopt a simple legislative regime based on zero tolerance, a multifaceted approach which is generated through dialogue with the communities that tolerate harmful practices must be adopted if the effective elimination of harmful practices is to be achieved.³⁹

These traditions have been in existence even before the advent of colonization, civilization and the advent of written laws. Even with modernization, it has been an uphill task to change some of these harmful traditional practices like the one under discussion in this paper. The writer advocates various ways that could be employed to

³⁵ S.12, Constitution of the Federal Republic of Nigeria 1999 (as amended) hereinafter referred to as 1999 Constitution

³⁶ Section 17 (3) CFRN, 2004

³⁷ *Ukeje v. Ukeje*, SC.224/2004

³⁸ *Unini Chioma*, (Jul 6, 2016) <<http://thenigerialawyer.com/female-child-has-right-to-inherit-fathers-property-in-igboland-supreme-court/>> Visited 1 June 2018.

³⁹ *John Tobin*, (2009) The International Obligation to Abolish Traditional Practices Harmful to Children's Health: What Does It Mean and Require of States? , *Human Rights Law Review*, Vol. 9. Issue 3, pp. 373–396

effect the needed change to this tradition which is harmful not just to the person affected but also to the family members.

i. The role of the family in changing the harmful practice.

Elder Dan strongly believes that families in the community have a big role to play in seeing that this practice is stopped. Families are to challenge this practice by burying their childless dead on the family compound or on the land or property of the deceased male if he has any. If he does not and they have a space to be used, they should go ahead and bury their dead. This is taking the bull by the horn and challenging the traditional institution.

The tradition believes that non-compliance has negative repercussions on the family. This could come in the form of continued childlessness, untimely death, recurring family sickness and other calamities. However, whereby the family suffers none of these expected calamities; it would then give a lie to the reason for the harmful practice. He and some of the people believe that families can bury without any negative effect.

Some families even after complying still have infertility affecting some other family members so what then is the rationale for continuing a custom that is manifestly based on ignorance. Again, Elder Dan believes that it is fear that is fuelling continuance of the custom. Once the fears of negative repercussions are removed, people will be more disposed to discontinuing the custom.

John⁴⁰, a young married but childless man died in the month of May 2018 and the family interred him on a piece of land where he was building a house. They have ignored all warnings from the elders to exhume the body and re-bury at *abada*. The family said they have no intention of burying him in the evil forest and that they were ready for any repercussions. Philip also buried his childless elder brother in his own compound and has refused all warnings to re-bury. He said the choice not to marry or procreate was voluntarily made by his brother and therefore he should not suffer any form of discrimination or stigma from it. This is the type of action families should be taking and when the practice becomes more widely ignored, it will gradually be eliminated completely.

There is a saying in the community that the gods are not blind, they see and know everything. This cannot however be accurate when juxtaposed with the concept of pseudo fatherhood which is prevalent in the community. Some men when they realize that the infertility is from them tacitly permit the wife/wives to sleep

⁴⁰ Surname withheld

with other men in order to get pregnant. The child that results from that pregnancy is the child of the couple. By so doing, he escapes the stigma, the scourge of childlessness and the obnoxious and shameful burial in the evil forest. If the gods can see, then the man cannot ipso facto be said to be fertile or to have fathered a child/children. If the tradition works as they believe, then the lie of the man cannot save his family from shame and stigma, yet, it is accepted in the community.

Nduka⁴¹ finally accepted that he was sterile and permitted his wife to get a child outside. He will go out in the night leaving the coast clear for the wife and her lover; on his way back, he will start singing at the top of his voice from a distance to alert the wife and her partner. The wife had children who were credited to the husband but the marriage ended in divorce and shame because according to the man, the wife continued the affair with the other man even after having children. Paul⁴² knew his two children were from two different men but he was satisfied because it removed his name from the register of the childless. He died many years ago but the sterility is presently affecting his surviving son who instead of seeking medical attention, has resorted to putting the blame on perceived spiritual enemies. The wife is a Christian and refuses to commit adultery for the sake of children. The contention of the writer is that pseudo fatherhood makes the reasoning of the elders faulty.

Again, a family can stand on the provision of Section 42 of the Constitution and the precedent laid down by the Supreme Court in the case of Ukeje⁴³ to declare the practice discriminatory and therefore unconstitutional.

ii. Advocacy and dialogue

Advocacy and dialogue with the communities that tolerate harmful practices must be adopted if the effective elimination of harmful practices is to be achieved.⁴⁴ Advocacy and dialogue is one of the effective ways of eliminating this tradition. Non-Governmental Organizations and relevant government agencies have a role to play. This will involve education and sensitization on issues of childlessness. Understanding the root causes of infertility and medical treatment where necessary will be a step in the right

⁴¹ Surname withheld

⁴² Surname withheld

⁴³ Supra

⁴⁴ John Tobin, The International Obligation to Abolish Traditional Practices Harmful to Children's Health: What Does It Mean and Require of States?
ibid

direction. In Nigeria, men find it difficult to accept the fact that the infertility could be their fault. The blame is usually placed on the woman who is made to undergo many forms of treatment ranging from medical to spiritual. This mind set must be changed.

Ngozi⁴⁵ started going to hospital less than one year after her marriage to know why she could not get pregnant. Three hospitals ran extensive tests and concluded that there was nothing wrong with her. She was told to bring her husband for test. He refused and felt insulted by the doctor's suggestion. Eventually he went and it was discovered that he had very low sperm count that would require extensive treatment. He died childless without going for treatment and was buried in the evil forest. Ngozi has since remarried and presently has three children. Nnamdi's⁴⁶ case was due to sexually transmitted disease that was not properly treated but he is taking treatment and hopes for pregnancy and children at a later date.

There is a need to educate the people on all these challenges so they can act before it is late especially for the woman whose biological clock is time bound. Medical teams can visit these communities to specifically address the issue of infertility. Understanding of the problem will create room for solutions which would further reduce the incidence of childlessness and therefore the harmful burial tradition.

The advocacy and education will also bring understanding to the people of the negative emotional, mental and psychological effects of the tradition.

iii. The role of the church

Elder Dan believes that the church has a big role to play in eliminating this tradition. He narrated a story about a man who was buried in the evil forest but the Anglican Church intervened; the corpse was exhumed and interred in the church cemetery. No harm has visited the family of the deceased till date. He believes that if the churches will acquire land for cemetery, they could undertake burial of affected members in the church cemetery.

Christianity has been instrumental to eliminating the killing of twins and other harmful traditions and it can also be instrumental to the elimination of this burial tradition.

⁴⁵ Surname withheld

⁴⁶ Surname withheld

5. Conclusion.

Nigeria is multi ethnic with many traditions being practiced by the various communities. Some of these traditions are harmful mostly to women like female circumcision, widowhood rites, polygamy etc. Some affect both male and female and are harmful to them. One of such practices is the burial of childless adults in the evil forest called *abada*. The idea is to remove the 'curse' from the family. It is a practice that dishonours and derogates the person, discriminates against him/her and her family and stigmatizes them. It sums up the total contribution of the person to child bearing only.

This practice has negative impact on physical health, emotional, psychological and mental health of both the victims and their family. Some United Nations treaties and Conventions advocate for non-discrimination and for upholding the dignity of a person. They also advocate for elimination of harmful traditional practices even though the protections are limited to only women and the girl child. However, it is advocated that men can also come through these conventions to seek redress. Once they can establish that they are likely to suffer harm because of the practice, the law should avail for them. Their families can also aver that they will suffer or have suffered harm because of this practice. If enough publicity is generated, it could lead to amendment of the treaties or new ones being made to protect the interest of the man also.

The challenge here is still the fact that these United Nations instruments have not been domesticated in Nigeria and so is not yet part of our body of laws. There is need for the Nigerian government to domestic many of these laws which they have ratified as member states of the United Nations.

The Nigerian Constitution also provides for non-discrimination of its citizens and section 42 as has been seen in the *Ukeje*⁴⁷ case can be the legislation to challenge this practice for being discriminatory against childless persons.

Apart from the law, this practice can also be eliminated by concerted action by the affected families in the community, by advocacy and dialogue and by the church playing a more active role. Education on infertility will help create better understanding of the issues. It took advocacy, education and intervention by the church and the government to stop the killing of twins and some other harmful practices; it can also be employed in the quest to eliminate this harmful practice of burying childless adults in the evil forest.

⁴⁷ *Supra*