



Violation of Women's Rights in Cameroon: An Analysis under Statutory and Customary Law

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Abstract

In Cameroon, both statutory and customary law are sources of law and it would not be right, or perhaps out of place to settle either for the superiority of written law because for any case to be permissible especially customary law or the customary law rules most of the cases are hardly brought to court. In ensuring the protection of women's rights, the protection and treatment of persons are expected by the various statutory and customary laws of the country. Even though both laws have provided protection for all women, customary law through its various practices continues to consider women as frustrated and abandoned commodities which has seriously affected the position these women obtain in society. This paper enunciates that when dealing with women's rights in Cameroon, the position occupied by customary law is unjust as they considered women as property, and a property cannot own property. The continuous unmanageable practices carried on women's rights have created cataclysmic injuries and damages causing statutory law to frown at these inhumane practices experienced by the women in the country and address these odds of customary law. Therefore, in this lane, we believe that women, just like others, deserve to be treated humanely when it comes to the protection of their basic rights, as provided by the various human rights laws that Cameroon has signed and enacted, and customary law is not an exception.

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Introduction

The debate concerning women's rights has for decades remained an unanswered and naysaying issue in many academic debates which has raised lots of controversies as to whether women are still considered an aspect of relevant protection and recognition.² The State of Cameroon has contributed enormously by ensuring that women should be given adequate protection and recognition at all levels of interference. Despite the country's commitments to guaranteeing women's rights and ensuring gender equality for everyone in its 1996 Constitution and the 1974 Land Ordinance, Cameroon believes that the laws should not be gender-biased. The rules in law stand that in order to enhance the right to property for citizens, there is a need for the law

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² This has been a gross violation in consonant with the provision of the Universal Declaration of Human Rights 1948 stated in its article 1 that all human beings are born free and equal in dignity and right. That everyone is endowed with reason and conscience and should act towards one another in a spirit of brotherhood. As this is not enough, the Declaration continues in Article 2 that everyone is entitled to all rights and freedoms set forth in the declaration without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. So, from the onset, everyone irrespective of status and sex have that right to be accorded adequate protection in the eyes of the law, and the women's race is not an exception to this effect.

to be applicable. It is for this that, the Preamble of the 1996 Constitution states and emphasizes that "*every human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights.*"³ A clear and simple interpretation of this provision means that the Constitution forbades all forms of discrimination based on gender inhibiting people from enjoying their rights. As a matter of prominence, the Constitution further provides that ownership shall mean the right guaranteed to every person by law to use, enjoy, and dispose of property. No person shall be deprived thereof, save for public purposes and subject to the payment of compensation under conditions determined by law.⁴ A thorough reading of this provision implies that all people in the country have exclusive rights not only to access and use but also to exercise absolute rights of everything with huge interest in matters related to ownership over property, including land. It is worth noting that the Cameroon, Constitution has expressly provided that it becomes the responsibility of the State of Cameroon to ensure the protection of those considered minorities and even preserve their rights in accordance with the law.⁵

By implication, there is no legal justification as to why women should be denied their rights in all ramifications, especially in matters of owning and controlling property based on customary beliefs who believe that a woman cannot own a property since she herself by implication is considered a property. We all know that under the African tradition and practice, land especially represents economic and political power to the African people, and equally African women's right to this land will help to endow and enable them to be active drivers in all development practices and would embolden them in improving their productivity.⁶ The practical, acceptable rules and undoubtedly practice is that Cameroon has affirmed its attachment to ensuring equality in rights by invoking the fundamental principles enshrined in the Universal Declaration of Human Rights⁷, the Charter of the United Nations, and the African Charter on Human and Peoples' Rights⁸, and even including all duly ratified international conventions related to these instruments.⁹ The rule remains that International Law is self-executing in Cameroon in every circumstance. A glaring example is that provided for in, Article 45 of the 1996 Constitution which emphasizes that

*... All duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement. Based on the content of this constitutional provision, the application of any international instrument in Cameroon is automatic.*¹⁰

³ para 4 of the Preamble to the Constitution of the Republic of Cameroon, 1996 to amend the Constitution of 2 June 1972 as amended in 2008.

⁴ para 5(19) of the Preamble to the Constitution of the Republic of Cameroon, 1996 to amend the Constitution of 2 June 1972 as amended in 2008

⁵ Para 5(2) of the Preamble to the Constitution of the Republic of Cameroon, 1996 to amend the Constitution of 2 June 1972 as amended in 2008.

⁶ Fonjong, Sama-Lang and Fombe 2012 Ethics and Social Welfare 263

⁷ Universal Declaration on Human Rights (1948) (UDHR) 71.

⁸ African Charter on Human and Peoples' Rights (1981) (Banjul Charter)

⁹ para 5 of the Constitution of the Republic of Cameroon, 1996 to amend the Constitution of 2 June 1972 as amended in 2008.

¹⁰ Article 45 of the Constitution of the Republic of Cameroon, 1996 to amend the Constitution of 2 June 1972 as amended in 2008.

To this effect there is some importance to Article 17 of the Universal Declaration of Human Rights laying more relevance in guaranteeing everyone's right to property and calls on states to refrain from practices and policies that deprive anyone, women included, from enjoying this right. In a similar vein, Articles 18(3), 19, and 21 of the African Charter on Human and Peoples Rights emphasize the need to refrain from all forms of discrimination against anyone and the right to freely dispose of one's rights. Articles 2(f) (g), 5(a), and 16(h) of the Convention for the Elimination of all Forms of Discrimination Against Women¹¹ crown it all by calling on states to eradicate customs and practices that violate women's rights. The law also demands States to adopt effective and efficient measures to ensure that all women exercise the right of ownership, acquisition, administration, and disposition of property and should not be discriminated against. The rule of law remains that even though the above provisions do not emphasize indigenous women, the words them in it's whole "everyone" or "all people" can be seen to include indigenous women. It has been maintained that these provisions serve as an indispensable step towards securing the right to land of indigenous women. Related studies reveal that building on CEDAW, indigenous women expect to find a connection between international human rights instruments promoting their rights, and local values and practices that improve their rights, most especially their rights to land. Moreover, the rights of women are also echoed in the International Covenant on Civil and Political Rights;¹² and the International Covenant on Economic, Social and Cultural Rights.¹³ The rule remains that customary law in Cameroon is silent on women's rights and the courts seem to recognize and follow these practices.¹⁴ As a result of this depersonalization, many women go through unfulfilled life in many ways, but due to the ignorance on the part of most of them, they accept this as the natural way of life. In Cameroon therefore, it could be established that one of the major sources of discrimination against women is customary law which embodies traditional beliefs and practices.

Assessing the Complexities of Customary Law in the Protection of Women's Rights

Issues of Customary law are handled by the famous Section 27(1) of the Southern Cameroon High Court Law 1955 shows the recognition and enforcement of only customary law that is not repugnant to natural justice, equity, and good conscience or incompatible with either directly or by implication, with any existing law of the land. In the light of the authorities whenever there is a conflict between any written law and custom, the former shall prevail.¹⁵ Certain conditions must be met in order to arrive at this situation. First, the custom must be reasonable and must have been practiced from time immemorial.¹⁶ The rule of the law is factual as every, custom in law must be able to fulfill the two tests, which include the repugnancy and incompatibility tests. This means, that for the custom to be applicable, it must not be:

- i) Repugnant to natural justice, good conscience, and equity or;
- ii) Inappropriate either directly or by natural implication with any written law for the time being in force.

¹¹ Convention on the Elimination of all Forms of Discrimination against Women (1979) (CEDAW)

¹² Articles 1, 2, 3, 26 and 27 of the International Covenant on Civil and Political Rights (1966) (ICCPR).

¹³ Articles 1 and 5 of the International Covenant on Economic Social and Cultural Rights (1966) (ICESCR).

¹⁴ Alice Fodje v, Ndansi Kette, Appeal No, BCA/45/86, (Unreported),

¹⁵ C. ANYANGWE, *The Cameroonian Judicial System*, Yaounde: CEPER, 1987, p. 243.

¹⁶ J.N. TIEMNGAH, *The Rights of Widowhood in Former West Cameroon. A Case Study of the Fungom Area*, (Maitrise Dissertation), Faculty of Laws and Economics, Yaounde, 1990, p. 45.

The controversy as to the application of customary law has been ensued by subjecting the validity of customary law to decisions of non-customary courts. In the Nigerian case of *Liadi Giwa v. Bisiriyu Erinmilukon*,¹⁷ Taylor, F.J. pointed out that:

“It will always be a well-established principle of law that every native law and custom in the society must always be evidence which should always be decided on the facts presented before the court in each particular case unless it is of such notoriety and has been frequently followed by the courts that judicial notice would be taken of it without evidence required in proof“.

What we need to understand here is that issues of gender- discrimination continue to be seen and will always be considered one of the most notorious features of customary law, as most women will always find themselves in a male-dominated society. Men control the institutions that have been set up around her. In traditional Cameroonian societies, a man’s wealth is still said to be measured by the number of wives and children he has. Conversely, every woman in the African community is always considered as property, and in most cases, a property cannot own property. Traditionally, women are men’s property, to be handed over to male inheritors, along with other property at the time of a husband’s death. Customary law does not support or approve the sharing of property, especially landed property, between wife and husband on divorce. The wife is still considered as part of her husband’s property. Gender discrimination under customary law is partly founded on the notion of dowry. Indeed, under most customary laws, dowry is used as a measure to justify certain discriminatory practices against women, notably the refusal to grant them inheritance and succession rights. Under customary law, dowry has great significance. In the South West Court of Appeal case of *Kwela Theresia Amih v. Amih Sam*,¹⁸ his Lordship, Justice Ebong, explained the role of dowry in customary marriages. He wrote, on page 2 of his judgment:

Dowry in customary marriage plays an important part as dowry is in fact the first indication of the seriousness of the suitor not only in Cameroon but in most African countries. But to whom this dowry is paid differs from Conflict between Customary Law and Human Rights in Cameroon from one custom to another, but in most cases, the dowry is paid to the parents and family of the woman, and not to the woman.

It was observed that Section 27 (1) calls for the recognition and enforcement of laws that are not repugnant to natural justice equity and good conscience. Gender inequality as sanctioned by customary laws is best reflected in the domain of succession and inheritance. Under most customary laws, women cannot own or inherit property from their parents or husbands. In fact, women are regarded as legal minors. In the event of the death of her husband, a widow may be inherited along with other property by her husband’s relatives.

Criticizing and Condemning the Frontage of The Customary Law System in Cameroon

The Cameroonian Customary law dictates that in the presence of suitable male heirs, a wife, and even a daughter cannot inherit on the intestacy of her husband or deceased father. The courts have often rejected this patriarchal interpretation of custom as reflected in the High Court of Fako decision in *Nyanja Keyi Theresia & 4 Ors. v. Nkwingah Francis Njanga and Keyim administrators of the estate of Keyi Peter*.¹⁹ The deceased, who was polygamously married, died in 1997. During his illness and burial ceremony, his brother and his cousin took care of him. After the burial, on the strength of a family meeting, the deceased’s brother and cousin were

¹⁷ [1961] 1 All N.L.R. 294

¹⁸ Court of Appeal of the South West Region: Suit No: CASWP/CC/86/95: unreported.

¹⁹ High Court of Fako Division: Suit No. HCF/AE57/97–98: unreported.

appointed next of kin²⁰ to the deceased's estate on behalf of the children who were by then adults. They were subsequently issued letters of administration over the deceased's estate. The deceased's daughter disapproved of the way her father's estate was administered, alleging that the administrators had failed to consider the interest of the deceased's children and had been cruel to them. The administrators claimed that the deceased's daughter and her mother had been partially responsible for the deceased's death and, by virtue of that fact; the daughter was not entitled to benefit from the estate.

The court found that the defendants (administrators of the deceased estate) had not established any proof that the deceased died as a result of the actions of his daughter and her mother. And even if there had been problems between them that fact would not be weighty enough to divest her of her father's property, even on the strength of a family meeting. Accordingly, the court revoked the letters of administration granted to the defendants for poor management of the estate and made an order to issue new letters of administration to the deceased's daughter on behalf of all the beneficiaries.

However, the situation is complex as in Cameroon, it continues to be a rare and isolated situation to reiterate in matters of inheritance as female children may only inherit property in the absence of male heirs, whether brothers or relatives. This situation has changed for the fact that Cameroon has ratified human rights instruments to recognize female rights, emphasizing that even female issues can inherit property.²¹ Thus, it may not be presumptuous to deduce that had the defendants not abused the administration of the estate, the daughters of the deceased would not have shown any engrossment whatsoever in it.

A glaring need is the case of *Chibikom Peter Fru & 4 Ors v. Zamcho Florence Lum*,²² where the Supreme Court was looking at the rule on a patriarchal custom that denies a married daughter the right to succeed on the intestacy of her deceased father. In 1985, the deceased died intestate and was survived by several wives and children, most of whom were males. However, the eldest of these children was a female whose name was Zamcho Florence Lum. She applied for a next-of-kin declaration before the Mankon Customary Court after the death of her father. The court temporarily declared her next of kin of the estate of the deceased until a 'proper' successor was selected in the near future from among the boys proving the need of family circles to be worthy of commanding the estate of the deceased. In 1989, some members of the family, including some of those who had backed her application to be made next of kin at the customary court, brought an action at the High Court soliciting, among other things, the invalidation of the letters of administration allowed to her. The trial judge halted the application but ordered Florence to render accounts of her administration of the estate to the Administrator General.

²⁰ A next of kin declaration is a preliminary document to the issue of letters of administration in the former Southern Cameroon. It is issued by a competent customary court, upon an application tendered before the court, appointing a beneficiary to exercise control over a deceased's estate. Upon obtaining the declaration, the beneficiary must proceed to the High Court where letters of administration may be issued on the strength of the declaration.

²¹ reference is made here as to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in which Cameroon is a signatory which frowns on some harmful and obnoxious practices against women in which one of them is those related to discrimination as to the ownership of property and also that of inheritance.

²² Supreme Court judgment No. 14L of February 14, 1993. In the South West Court of Appeal, it was registered as Suit No. CASWP/17/931: reported in *Cameroon Common Law Report (CCLR)*, 1997, 213–223.

Not satisfied with the rejection of their request, they lodged an appeal against the mandate of the High Court to the North West Court of Appeal, sitting in Bamenda, the regional capital. The Court of Appeal allowed the appeal and forbade Florence from administering the estate. Dissatisfied by the decision, Florence went on further appeal to the Supreme Court. The Supreme Court abrogated the decision of the North West Court of Appeal and referred the matter for hearing and determination before the South West Court of Appeal, sitting in Buea, the regional capital.²³ The Supreme Court's referral was based on two recommendations: first, the North West Court of Appeal dismissed the preamble of the constitution by discriminating against Florence as a female and, second, a custom that forbids married women from benefiting on the intestacy of their parents is offensive to natural justice, equity, and good conscience and, thus, offends the provision of Section 27 of the SCHL, 1955.

It was requested from the South West Court of Appeal to consider the original appeal filed against Florence in the North West Court of Appeal and the main issue was the allegation that she was not a proper person and competent to administer and manage the estate of her deceased father.

There is always that debate about women's rights in general and that pertaining to widows in particular, as so much concern has been made to women, policymakers, and universal organizations alike in matters relating to the property rights of women. In a traditional customary law environment, the woman finds herself in essentially male-dominated surroundings. This is because the various customs that are obtained in most African countries and the institutions that regulate day-to-day life are controlled by the men-folk. Thus, women have very limited rights. The widows in most instances are considered by many communities in Africa as an object of inheritance in case of the breakdown of a customary law marriage through death,²⁴ but of the fact that such practice is contrary to the law²⁵ cases abound which show that this practice is instead gaining ground²⁶. The tendency is that upon divorce, the woman has little or no rights over property. A concrete example is experienced in the case of *Achu v. Achu*²⁷ Inglis, J posited that:

²³ Previously, (before December 2006), in entertaining appeals, the Supreme Court of Cameroon operated through the doctrine of *renvoi*. Once it received an appeal from one of the ten regional Courts of Appeal in the country, rather than determining the appeal on its merit, it would issue legal recommendations and refer the matter to another coordinate Court of Appeal for determination. With respect to appeals coming from one of the two Anglophone regions of the country, as was the case in this appeal, the Supreme Court would remit the appeal to the Court of Appeal of the other Anglophone region. Based on the provisions of Law No. 2006/016 of December 29, 2006 (to lay down the organization and functioning of the Supreme Court), the Supreme Court no longer entertains appeals through the process of *renvoi*. Appeals are determined based on their merits.

²⁴ *Eko v. Serah Imbole Ngoma*, suit N° 28/86-87 C.R. BK. 1/86-87, p. 55 (unreported), Bonjongo Customary Court

²⁵ *Law 81-02 of 29 June 1981 on Civil Status Registration in Cameroon*, s. 77(2) of which provides that : "In the event of death of the husband, his heirs shall have no right over the widow nor over her freedom or the share of property belonging to her [...]"

²⁶ *Christian Taboti v. Mbiekwe Kiembo*, Appeal N° BCA/61/86 (unreported); *Japhet Nchanji v. Tanto Gwe'u* Appeal N° BCA/11/85 (unreported).

²⁷ Appeal N° BCA/62/86 (unreported).

“Customary law does not countenance the sharing of property, especially landed property, between husband and wife on divorce. The wife is still regarded as part of her husband's property”

We need to understand here that the situation of customary law is always silent. In the case of *Alice Fodje v. Ndansi Kette*²⁸ seems to suggest the contrary view. In this case, according to the native laws and customs of the people of Bali, the parties were married in 1952. The marriage was blessed with eight children. In 1981, the appellant left the matrimonial house. The respondent took a second wife. In 1983, the respondent pleaded for divorce in the Bali customary court which was accepted. However, no order as to property adjustment was made.

As a result, the appellant appealed. Here, Justice Arrey gave verdict that the appellant should take possession of one of the three houses, and also collect rents from the other two. But the commandment seems to be an isolated authority on its own merit. This rule under customary law is not surprising and foolish as from time immemorial, the women's race has always been considered an abandoned commodity with a voiceless inclination as many believe that women have no place in society. The rule stands that even though with all the ramifications and efficacy of Section 27(1) of the Southern Cameroon High Court law, issues of customary law when dealing with the protection of women's rights and protection continue to be regarded with, low and inappropriate interest as the violation levels continue to be in the rise. One would begin to be worried about why the aspect of customary law continues to regard women as insignificant irrespective of all the provisions and legal implications stipulated by the various provisions that frown at these obnoxious practices carried on women. The practices have really been a hard nut to crack as many question whether those fallacious customary law practices experienced by women will one day be eradicated. The laws are clear as they continue to challenge those unacceptable practices on women, but it is a common plague and a deadly pandemic that many in customary society find difficult to eradicate and combat. This is really a matter of common hallucinations that have really been dreadful in the eyes of mankind. The question one would be tempted to ask is whether the presence of the written law of the law²⁹ will affect the practice of customary law practices since written or customary law both are regarded as sources of law in Cameroon. There will really be an aspect of fallacy in ascertaining that with the presence of written law in Cameroon, customary law will continue to be an aspect of violations of women's rights.

A clearing situation of violations of women's rights is that stipulated under Article 5 of the Universal Declaration of Human Rights which really frowns at cases of all forms of torture, cruelty, or any type of inhuman treatment. As if this is not enough, the provision of Article 5 of the African Charter on Human and People's Rights equally takes a nod by declaring that: Every individual shall have the right to the respect of the dignity ingrained in an individual and to the acknowledgement of his legal status. All forms of degradation and exploitation of humans particularly the slave trade, slavery, torture, and inhuman, cruel, or degrading punishment and treatment shall be prohibited. This provision of water dropping is just town crier condemnation

²⁸ Appeal N° BCA/45/86 (unreported).

²⁹ This is in respect with the provision of Section 27(2) of the Southern Cameroon High Court Law 1955 which provide that any customary practices which is not compatible with the written law of the law should be abolished. The Country Constitution is the highest law of the land and every law whether customary law must take their inspiration from this law, and under no circumstances with the State jeopardize its stability and security irrespective of the custom in question.

in Cameroon as many women today in Cameroon are still considered as merchandise under customary law subjecting them to inhuman degrading treatment through torture, beating and thereby unvarnished off, of the human dignity bequeathed in them where aspects of domestic violence continue to be on the rise since most customs believes in their own proposition that the only way of correcting can be expressed through violence. It is really shameful that the Cameroon Penal Code really condemns inhumane practices meted out to women in their various legal dispositions,³⁰ the situation as to violence against women continues to be appalling and devastating as these women in all ramifications continue to elements of ridiculed and frustrated platform with the increase of violence on them. Truly something really needs to be done as this has been a plague of huge hallucinations and catastrophes.

Presence of Written Law versus Customary Law provoking continuous controversies and declined Reconciliation

The rule of law remains that both written and customary law in every society are considered as a source of law in Cameroon and it would therefore be wrong, or perhaps out of context to settle either for the superiority of written law because it defines the standard of admissible customary law or the customary law rules simply because most of the cases are hardly brought to court. Nevertheless, the people of Cameroon have accepted the customs as binding, notwithstanding legislative enactments to the contrary.

Understanding the Aspect of Written Law in the Protection of Women's Rights

Written laws in all ramifications will always be all laws enacted by the legislative body of our State which are binding immediately after they are promulgated by the Executive arm of the State. And of course, keeping in mind the bi-jural nature of the Cameroonian State, all constitutional enactments have alluded to and accepted foreign law: namely French and English laws. Of particular interest to us is English-received law which consists of:

- (a) the Common law
- (b) the doctrines of equity, and
- (c) The statutes of general application which were in force in England on the 1st day of January 1900³¹.

Inglis, J., in the famous case of *Enongenekang v. Enongenekangs*³² has emphasised the bi-jural nature of the Cameroonian state. In the enforcement of the basic law principle, the Cameroonian legislature has enacted Ordinance No. 81-02 of 29 June 1981 dealing partially amongst other matters with the question of property. This piece of legislation has not been successful both in its spirit and intent to give guidelines to this disturbing issue of property adjustments between wife and husband after the breakdown of marriage. In this regard, a huge recourse is made to foreign or foreign-inspired laws. In the Anglophone provinces of Cameroon, all Acts pursuant to Section 11 of the Southern Cameroons High Court Law 1955 are applicable.³³ In this respect, the Married Women's Property Act 1882 is instructive. It provides in Section 1(1) that: *“A married woman shall ... be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee”*.

³⁰ A good illustration of this can be seen from Section 275 to 283 of the Cameroon Penal Code

³¹ S. 11 of the *Southern Cameroons High Court Law, 1955*.

³² Suit N° HCSW/28MC/82 (unreported).

³³ S. 11 guarantees the application of foreign law in Anglophone Cameroon.

The recent decision of Lord Denning in *Midland Bank Trust Co. and Another v. Green and Another*³⁴ throws a lot of insight into this matter. This is what Lord Denning says: *“Nowadays, both in law and in fact, husband and wife are two persons, not one. They are partners-equal partners-in a joint enterprise, the enterprise of maintaining a home and bringing up children. Outside that joint enterprise, they live their own lives and go their own ways”*

The dictum above is reinforced by the position that English law knows no community of property³⁵ and the famous dictum of Romer, L.J. in the case of *Cobb v. Cobb* in reference to Section 17 of the Married Women's Property Act 1882³⁶ when he said that:

*“I know of no power that the Court has under section 17 to vary agreed or established titles to property. It has the power to ascertain the respective rights of husband and wife to disputed property and frequently has to do so on very little material, but whereas here, the original rights to property are established by evidence and those rights have not been varied by subsequent agreements, the court cannot in my opinion under section 17 vary those rights”*³⁷

The law is clear here as the provision of Section 17 would have been redundant in a situation where matters of divorce have been pronounced since its provisions would have stopped applying because it refers to "husband" and "wife". To cure these illnesses, the Matrimonial Proceedings and Property Act 1970 in its Section 39 allows an application within the period of three years to be made by either party notwithstanding that their marriage has been dissolved or annulled. Cameroonian courts are content with applying the principles adumbrated above with caution. In various local cases, effect has been given to local statutory enactments, particularly the 1981 Ordinance. In substance, it provides that a married woman can exercise a trade different from that of her husband³⁸ and can operate a separate bank account.³⁹ Indeed, if the woman purchases property with her income or sums from her account, ownership and title rest in her name. Consequently, in *Moussi v. Moussi*,⁴⁰ the court ordered that the items of moveable property bought by the wife but still in the custody of the husband be handed over to her. In the same strand of reasoning the High Court of Buea held in *Body Lawson v. Body Lawson* that each spouse should continue to have ownership of property purchased in their respective names.

Cameroon laws to this effect have basic provisions for the protection of human rights. Firstly, the Constitution of Cameroon of 18 January 1996 in its preamble mentions a good number of human rights under the Universal Declaration on Human Rights especially those to the African Charter on Human and People's Rights. The preamble of the Cameroon Constitution states

³⁴ [1982] Ch. 529, p. 539

³⁵ *Pettitt v. Pettitt* [1969] 2 All E.R. 385, H.L

³⁶ Section 17 provides that: In any question between husband and wife as to the title or possession of property, either of them may apply to the High Court or to a County Court and the Judge may make such order with respect to the property in dispute [...] as he thinks fit.

³⁷ *Cobb v. Cobb*, [1955] 2 All E.R., p. 700.

³⁸ S. 74 (1) of the 1981 Ordinance

³⁹ *Enie v. Enie*, suit N° HCSW/65MC/83 (unreported); *Body Lawson v. Body Lawson*, suit N° HCF/128Mc/86 (unreported); *Jones v. Maynard*, [1952] 1 All E.R. 802.

⁴⁰ Suit N° NCF/115MC/87 (unreported).

that⁴¹ “We, the people of Cameroon, declare that persons without distinction as to race, religion, sex, or belief pose inalienable and sacred rights. Affirm our attachment to the fundamental freedom enshrined in the Universal Declaration on Human Rights, the African Charter on Human And People's Rights, and all duly ratified international conventions relating thereto, in particular the following principles⁴²; All persons shall be equal before the law⁴³ the citizens shall have equal right to vote at the age of 20 years and above⁴⁴ no person shall be subjected to torture, cruel inhuman and degrading treatment, the state shall guarantee all citizens of either sex their rights and freedom, no person shall be arrested on ground of origin, religious, philosophical or political opinion or believe subject to public policy.”⁴⁵

Concretizing and Understanding of the Preamble of the 1996 Constitution of Cameroon in matters of women rights Protection

This law is very clear and considered by many as the highest law of the land⁴⁶ by providing that;

“We, the people of Cameroon, ... Resolved to harness our natural resources in order to ensure the well-being of every citizen without discrimination, by raising living standards, proclaim our right to development as well as our determination to devote all our efforts to that end and declare our readiness to co-operate”

The Preamble in its entirety also provides that all persons shall have equal rights and obligations. The State shall provide all its citizens with the conditions essential for their development; the State shall preserve the rights of indigenous populations and also ensure the protection of minorities in accordance with the law. This same Preamble of the Cameroon Constitution is as it specifies and embarks on protecting the fundamental human rights of all without discrimination. This preamble ensures that the concept of human rights protection and recognition should be done without any smidgeon of discrimination as to sex, status, nationality, and other spheres of activities. This same Constitution in its Article 65 is to the effect that the preamble of the constitution is an integral part of the constitution. The notion of protecting women is given great relevance in this law in all aspects of implementation be it employment, health, education, nutrition, and other country's activities. The question we should be asking ourselves is in ascertaining the continuous violation of women's fundamental human rights irrespective of the numerous relevant provisions provided by the Constitution. The notion here should not be in instituting laws but showing its various levels of commitment to how women's rights have been protected. The level of violation and rights abuses is alarming when we all know that there is a nationally recognized deal with the safeguarding and protection of individual human rights. The country has even gone to the extent of amending the 1996 Constitution,⁴⁷ yet the decree of violence done on women is on the increase. Women are discriminated against at all levels of activities in the country from domestic violence to other activities, especially in the domain of customary law where these women are valueless and

⁴¹ Law No 2008/001 of 14 April. This law amended and supplemented law No 96/06 of 18 January 1996 which itself amended the constitution of 2nd June 1972

⁴² Preamble, constitution of the Republic of Cameroon, 18 January 1996

⁴³ part 1 art 1 (1),

⁴⁴ art 2(3)

⁴⁵ Ibid Preamble

⁴⁶ Article 65 of the 1996 Cameroon Constitution considers the preamble as an integral part of the constitution

⁴⁷ The 2008 law rectifying and amending the 1996 constitution.

placeless in the society comparing them to an extent as a heritable commodity and object of the society.

Are Women under Customary Law quantified as Heritable Commodities?

Actually, the fact that the bride price is seen to manifest the unification of two families rather than two individuals has far-reaching consequences. We need to understand here that the death of a man in the marriage does not in any way terminate the marriage, as it is possible, with the consent of the woman, for her to be inclined to another member of the family in marriage.

It was an old Jewish custom for the “levir” or brother of a deceased to take responsibility for his wife so that a son is born to the latter and perpetuate his name. The objective in customary law is different. It assuages the widows’ incapacity to succeed and Professor Elias writes that the union is “a scheme of social insurance against neglect and hunger for the deceased’s dependants.” In *The Estate of Agboruja*, it was explained that the premise of the custom was to assure the continued maintenance of the widow and her children and was not appalling as contended by the widow; unless it could be shown that the new husband was evil-minded towards that family when the deceased was still alive. The male relative becomes a new father for the children and is liable for their upbringing as if they were his own children.

One has to emphasize that the notion of widow inheritance in most instances has given the impression of compulsion. Widows have always had the option to refuse to take a relative of the deceased as a husband without thereby denying the right to maintenance by the family if they remain in the family. The main importance of the expression lies in the fact that it is not necessarily that the successor takes over the widow as a wife, but rather the commitments towards her, which were previously those of the husband. An Ashanti proverb cited by Rattray says that “*The one who takes the gun of the deceased also takes the widow*”. The gun symbolises the means of livelihood and one cannot take it away without assuming the responsibility to feed the mouths who are dependent on it.

So, whether the widow becomes a wife to the successor or any other person will always depend on the consent of this widow. This was emphasised by a West African chief who described the situation as: “*If somebody dies any member of the family can go secretly to any of the wives and find out if she would marry him. If the woman agrees, there is a customary present that the relative gives to the woman. If there is agreement between the woman and the man, the man is to go and inform the oldest person in the family.*” In his study on the Bali tribe in Cameroon, it is established that widows generally have three options. They could return to their parental homes, remain in the home of the successor under his guardianship as a widow, or become the wife of one of the relatives of the deceased. When she chooses to return to her parental home, the bride price must in principle be returned, although the right may be waived by the family. Where she opts to remain in the husband’s compound as a widow, with or without children, the obligation to refund the bride price is removed and she is entitled to maintenance from the husband’s family. Indubitably therefore, the consent of the widow is necessary, especially as Article 77 (2) of the Civil Status Registration Ordinance No. 81-02 of 29 June 1981 provides that “*In the event of the death of the husband, his heirs shall have no right over the widow, or over her freedom.*” When there is consent, the matter cannot get to court, and in fact, we came across a case that is representative of the actual situation. In *Asane Florence v. Ndeh Thomas*, the plaintiff’s mother and three other widows were taken over by her “uncle” when their husband died. The defendant was one of the other children who were born of these unions. In the case, however, the point in issue was not the levirate marriages but rather whether the

plaintiff was to succeed to property as the child of her biological father or of the father by inheritance.

The courts have always in most circumstances generally seen levirate marriages as always being contrary to natural justice, equity, and good conscience. This is a good situation that was held in the case of *David Tchakokam v Keou Magdaleine* it was stated that “*any custom which says that a woman or any human being for that matter is the property and can be inherited along with a deceased’s estate is not only repugnant to natural justice, equity, and good conscience but is actually contrary to written law.*”

In light of what is said about the bride price and levirate marriages, it is clear that the “Woman as Property” theory is in sharp decline. The process was started in the divorce case of *Fodje v. Kette*, described by Professor Ngwafor as “a famous first,” because Arrey, J. gives the wife the right to occupy the matrimonial house as well as collect rent from two other houses. An appeal is still pending against that decision to the Supreme Court. This reflects that the highest judicial authority considers the case to have been rightly decided. As proclaimed in the preamble of the Constitution, the equality of sexes is a matter of public policy. The principle is also enshrined in Article 2 of the African Charter on Human and Peoples’ Rights, which has been approved by Cameroon. In this context, the high judicial body overruled a decision of the Bamenda Court of Appeal in *Chibikom v. Zamcho Florence* in which a married woman was held not to have the competence to administer and manage her father’s estate.

The Situation of Divorce: A concrete ground in actions for the Property Rights of Women

The situation under the Married Women Property Act of 1976 sees women as having the same rights as men to initiate and finalize a divorce when issues of property are raised. For issues of divorce can be granted by mutual consent, breakdown of community life, or fault, whereby the grounds for fault may include adultery or domestic abuse. In practice, divorce caused by the issue of domestic abuse or adultery may be much more difficult to obtain due to the discriminatory civil law surrounding such acts. Women can be deemed to commit adultery regardless of the location whereas men are deemed to commit adultery only if the act occurs in their home. Most men believe women are property,⁴⁸ and how can property own property, and because of this, the judicial officers look at the women as inferior thereby finding it difficult to provide a solution to the existing problem faced by the woman. The issue of adultery provided for in Section 361⁴⁹ of the Penal Code as Criminal is insignificant when it comes to law enforcement officials, they still have the conception that man by nature or from origin is polygamist, and committing adultery on the part of the man or husband is but normal which needs not to be overemphasized. The provision itself is problematic as it provides that for the men to be punished for the act of adultery, the act should have been committed in their homes or elsewhere habitually. This is a falsified and pushed environment for the supposed law enforcement officers to violate the law. The law says for adultery to be committed elsewhere it must be habitual⁵⁰ as to the men, so when women report cases of adultery to the judicial actors,

⁴⁸ Customary law position of the law as to property rights which sees women as property and according to this law a property like woman cannot own a property.

⁴⁹ This section of the law talks about the aspect of adultery which should be punishable

⁵⁰ Thanks to the new law of 2016 amending the provision of the 1967 law on adultery. Unlike the 1967 penal code which punished women simply for having sex with individuals other than their spouses, but equally punished men only if they had sex at home or habitually elsewhere with someone other than their wives, the new law punishes

they are reluctant in the context of this provision and sometimes even ignore the law as they claim that they cannot be proof of adultery since having direct evidence as to adultery is always difficult.⁵¹ This is the situation under Criminal law, as the situation is, or will never be the same in Civil matters and cases. The situation under Civil law remains that a woman once she establishes the grounds provided in Section 1(2) (a) of the Matrimonial Causes Act 1973, is enough to amount to adultery.⁵² The judge is not required to grant a divorce on the grounds of domestic abuse, which is not criminalized by the law. In some communities, under customary law, husbands can divorce their wives in a traditional court without being required to provide justification for divorce. In particular, the civil code affirms that no influence is caused on parental authority due to the separation of the parents, and each parent shall respect the bonds of the other parent in the upbringing of the child. However, the court may make decisions in the best interest of the child as it deems appropriate.

Regarding matters relating to the division of property, the law is clear that in case of the occurrence of divorce, the marital assets are divided according to the ownership regime chosen at the time of marriage which can either be co-owned or separated property regime. For the former, the property should be equally shared after a divorce. This however is not the case in practice and Cameroonian women are often pressured to abandon their property rights.

The Complexities in Action for Property Rights of Women in Cameroon

Even the fact that the law gives the husband the right to choose which matrimonial regime to apply in the marriage agreement is a serious problem. According to the French Civil Code, Article 70 demands that if no choice is made as to the regime of marriage, then the couple is married under common law which allows polygamy and community of marital property. So even the law is encouraging polygamy, and they want to combat violence; how difficult it is. The situation here is that even if the husband is for the monogamous regime, it doesn't stop him

both men and women equally for sex with third party irrespective of where or how often. According to Section 361 of the new Code:

- (1) A woman who, being married, has sexual intercourse with a man other than her husband shall be punished with imprisonment for from two to six months or with a fine from 25000frs to 100,000frs
- (2) A husband who has sexual intercourse with a woman other than his wife or wives shall be punished as provided by subsection 1 above. However, the burden of proof of the existence of polygamous union shall lie with the husband
- (3) No prosecution may be commenced without the complaint of the wronged spouse.
- (4) Consent by wronged spouse to resume cohabitation shall put an end to the effects of conviction.

⁵¹ Family law Lecture Notes, Simon Tabe Tabe where it was established that proving adultery on direct eye witness is difficult, as to the provision of Section 1(2) (A) of the Matrimonial Causes Act 1973, since it is difficult to proof adultery by mere eye witness, it has provided for circumstances that the petitioner can use and establish and it will still amount to adultery. Situations such as undue familiarities, evidence of spouses, marital confidence, venereal diseases, blood test and a host of others will amount to adultery.

⁵² The situation here is that proof of adultery is difficult to establish using direct eye witness that is why the law has presented certain grounds that once proven can be presumed of committing adultery. Some of these grounds include; undue familiarity, venereal diseases, previous convictions, letters, confession, birth of a child and other relevant conditions.

from being polygamous as we know the general adage that; “*all African men by nature are polygamous.*”

The husband is and will always be considered to be the head of the family;⁵³ he also has the sole right to determine the family domicile⁵⁴ and, in the interest of the household and the children, may prevent his wife from taking employment.⁵⁵ This situation becomes rebellious and sarcastic, as we all know how it can ridicule the woman to nothing since the husband has absolute authority over their wife by depriving them of some privileges and advantages that she may derive, he thinks that he is the sole contributor of the family and the wife is not in any best position to provide for the family depriving her own fundamental right as to the right to work which is established in many international human rights and conventions that Cameroon has signed and ratified. The code in its entirety and realities gives much power to the husband who can violate her right at any time desired. Even the fact that women are deprived of full use and enjoyment of property is a serious problem,⁵⁶ for the husband has the right to administer communal marital property by empowering him to mortgage or sell the couple’s property without the consent of his wife. All these provisions are contradictory to our Cameroon constitutions, especially in its preamble which provides equal rights to all irrespective of the status, sex, language, or nationality in question. Both sexes have the right to enjoy fundamental human rights, and the right to property is not an exception.

Conclusion

The main rule will always be that everyone was and will always be created equal in the eyes of the law and thereby deserve equal treatment and protection irrespective of the status acquired. This excitement and happiness have been welcomed with comfortable legal propositions ranging from the international, regional, and even national human rights instruments emphasizing the need to ensure that every human must be treated with respect in ensuring the safety of their basic rights in which women remain a constant privilege in all aspect of protection. It therefore becomes infuriating and embarrassing that women’s rights protection in Cameroon continues to be seen as a ramshackle aspect of no contemplation, thereby questioning the reasons why these laws were created in the first place since they cannot render satisfactory protection to women.

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⁵³ Article 213 of the Civil Code

⁵⁴ Ibid, Article 108 and 215

⁵⁵ Article 74 of the Cameroon Civil Status Registration Ordinance of 1981 provides that a husband may object to his wife’s exercise of a trade different from him in the interest of their marriage or children

⁵⁶ Article 1421 and 1428 is a good example of the Code depriving the women from using the matrimonial property. It continues by saying that only the husband has the right to sell or mortgage the matrimonial property, the wife has no right as to the property of the matrimonial home as she herself is considered as a property, and how can a property own a property.