

Human Rights of Women under Cameroonian Customary Law: The Need for Change



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ABSTRACT: Human Rights are those rights which are inherent in our nature and without which we cannot live as human beings. The sad fact remains that despite the guarantee of human rights by the Constitution of Cameroon and international treaties, the female half of humanity remains subject to distinctive and continuous forms of abuses, injustice and violence as well as to an enormous range of legal disabilities and discrimination. Our findings revealed that most of the abuses against the women in Cameroon are perpetuated under customary law by the men who see themselves more superior than the women. These abuses take the form of domestic violence and torture, the refusal of the right of inheritance, control and ownership of landed property, ignoring of the woman's right of consent before marriage, infant betrothal, shaving of hair and sleeping on the floor by a widow after the death of the husband, female genital mutilation and above all, asking a widow to drink the water that was used to wash her husband's corpse in a bid to prove her innocence that she did not killed her husband. We consider all of these dehumanizing moreover as the woman ceases legally to be a person upon her marriage. Her personality is thus submerged into that of her husband and she becomes the husband's property. The life of women is thus unfulfilled in many ways and they have accepted this as the natural way of life. There is thus a need for change. This is possible through a careful study and implementation by Cameroon Government of the recommendations that have suggested in the write-up.

1. INTRODUCTION

To talk about the "human rights of women" may sound rather incongruous to some people because the human rights concept as popularized by the United Nations Organization is meant to apply to all human beings irrespective of their sex or gender. But it is not at all absurd to talk about the human rights of the Cameroonian woman because the truth of the matter despite all the rhetoric about human rights being for all persons, the Cameroonian woman still experience the flagrant violation of her rights in many areas of life. And in many cases, the violation is due to the fact that she is a woman.

The United Nations itself has recognized this anomaly and lamented the fact that despite its various instruments on human rights, extensive discrimination against women continues to exist.¹ Professor Okagbue has observed that:

The sad fact remains ... that female half of humanity remains subject to distinctive and continuous forms of abuse, injustice and violence as well as to an enormous range of legal disabilities and discrimination simply because they are female and that these practices have either been ignored or have not generally been viewed as violation of the human rights and freedom of women².

Some of the questions that come to mind are: What is the cause of this sex - based discrimination? Does the problem have anything to do with women's physiology or biological make-up? OR is it simply a cause of the Darwinian theory of the survival of the fittest?

The answer to these questions seems to lie in the traditional world-view of the role of women in the society. In a typical traditional African milieu, the woman's place is in the home. She bores and races children, and looks after the domestic needs of the family while her husband goes out to gather food for the family. Her legal status can be seen only in relation to her father, brothers and

¹ See the preamble to the UN Convention on the Elimination of ALL Forms of Discrimination Against Women 1967.

² Isabell Okagbue: "Women's Rights are Human Rights", Nigerian Institute of Advanced Legal Studies, Lagos, 1996, at p. 2.

4 Hon. Justice Chukwudifu Oputa, "Women and Children as Disempowered Groups", in Women and Children Under Nigerian Law, Federal Ministry of Justice, Lagos, p. 4.

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later her husband. In other words, in most traditional societies, a woman did not have legal status as a person. As the learned Justice Oputa of Nigeria put it:

*According to common law tradition, as well as our own indigenous culture, a woman ceases legally to be a person upon her marriage. She was then without legal capacity. A husband and wife were regarded as one person and that person was the husband. The personality of the wife is thus submerged into that of her husband.*³

Consequent to the foregoing, the debate about women's rights under customary law in Cameroon in general and widows in particular has been of much concern to the women themselves, policy makers and international organizations alike. Within most traditional societies in Cameroon, the woman virtually finds herself in an essentially male-dominated environment. The various customs that obtain in Cameroon⁴ and the institutions that regulate day to day life are controlled by the men – folk. In this way, women have very limited rights. Upon a breakdown of a customary law marriage through death, the widow suddenly finds herself as an object of inheritance.⁵ Notwithstanding that this practice is contrary to the law⁶, cases are bound which show that this practice is instead gaining grounds.⁷ Indeed upon divorce, the woman has little or no rights over property. In *Achu v. Achu*,⁸ Inglis, J., posited that:

...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...

Following the dictum of Inglis, J., Joseph Temngah⁹ did not hastate to conclude that customary law in Cameroon is silent on women's rights and the courts seem to recognize and follow these practices.¹⁰ 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 discriminating against women is customary law which embodies traditional beliefs and practices. These customs and practices unabashedly rank women lower than men.

We therefore intend in this write-up to highlight some of the traditional beliefs and practices which serve to violate the rights of women. Awareness of the problem, it is hoped, will arouse activism in the heart of the reader and thus increase the number of advocates for the rights of women. Eventually, it is hoped that women will be accorded the same respect as their male counterparts. This is the basic concern of the human rights concept. Respect for the dignity of the human person, be they male or female.

2. WHAT ARE HUMAN RIGHTS?

Many of the basic ideas that animated the human rights movement developed in the aftermath of the Second World War and the atrocities of the Holocaust, culminating in the adoption of the Universal Declaration of Human Rights in Paris by the United Nations General Assembly on 10th December 1948. The true forerunner of human rights discourse was the concept of natural rights which appeared as part of the Medieval Natural Law tradition that became prominent during the Enlightenment with such philosophers like John Locke, Francis Hutcheson and Jean-Jacques Burlamaqui, and featured prominently in the political discourse of the American Revolution and the French Revolution.

Human rights are 'commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being'. Human rights are those conceived as universal (applicable everywhere) and egalitarian (the same for everyone). These rights may exist as natural rights or as legal rights, in local, national, regional and international law. The doctrine of human rights is mainstreamed in international practice, within international law, global and regional institutions, in the policies of states and in the activities of non-governmental organizations. It has been a cornerstone of public policy around the world.

⁴ Over 250 in number.

⁵ See the unreported case of *Eko v. Serah Imbole Ngoma*, Suit No. 28/86-87 C.R. Bk 1/86-87, p. 55 [unreported], Bonjongo Customary Court (Limbe Sub-Division-South West Region).

⁶ Law No. 81-02 of 29 June 1981, on Civil Status Registration in Cameroon. Section 77(2) 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".

⁷ See *Christain Taboti v. Mbiekwe Kiembo Gwei*, Appeal No. BCA/61/86 (Unreported).

⁸ Appeal No. BCA/62/86 (Unreported).

⁹ Joseph N. Temngah, "*Customary Law, Women's Rights and Traditional Courts in Cameroon*", Published in *Revue Generale de Droit*, Volume 27, November 3rd 1996, at p. 350. Also available in, <https://id.erudite.org/ider/udit/1035782ar>

¹⁰ See *Alice Fodje v. Ndansi Kette*, Appeal No, BCA/45/86, (Unreported),

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Human rights could also be viewed as rights that are taken to inhere in human beings solely on account of their being human. Such rights may be taken to derive from reason, God, nature or any other source. Whatever the case, they are supposed to apply to human beings regardless of their codification in any positive law.¹¹

Now, for what human rights mean, we may adopt the definition offered by the leading authority on the subject – the United Nations Organizations. The UN defines human rights in one of its publications¹², simply as “those rights which are inherent in our nature and without which we cannot live as human beings”. Human rights therefore are claims which an individual has to be able or is allowed to function as a human being. Article 1 of the Universal Declaration of Human Rights affirms that all human beings are born endowed with reason and conscience. These are attributes which distinguish the human person from the lower animals. These attributes ought to motivate a human to seek truth and justice for himself and for others.

According to Miriam Hirsch, the concept of human rights is basically about the protection of minorities. In her view, a minority in the context of human rights is:¹³

... a group of people who, because of their physical or cultural characteristics, are singled out from others in the society in which they live for different and unequal treatment ... and who therefore regard themselves as objects of collective discrimination.

So, the expression “minorities” in this sense is not about numbers necessarily. What is at issue here is the fact that a group of people in a society is singled out for unequal and unfair treatment by the more powerful group in that society and in our context, the women. In the preamble of its charter, the member states of the UN declared their commitment to promote human rights in the following words:

We the people of the United Nations determined ... to reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ... have resolved to combine our efforts to accomplish these aims.

In 1948, the Organization proclaimed the Universal Declaration of Human Rights. This document sets out a list of basic rights in 30 Articles. After the proclamation, the UN went on to transform the principles of the Declaration into treaty provisions. In this way, it was ensured that every state that ratifies the Declaration will be legally bound to ensure the protection and promotion of human rights in its jurisdiction. Cameroon is one of the many countries in the world that has voluntarily consented to be a party to this treaty. She is therefore bound to promote respect for the fundamental rights of all her citizens, regardless of customs and traditional beliefs.

To show her commitment to the universal Declaration of Human Rights, Cameroon has entrenched it in her Constitution.¹⁴ Apart from the Universal Declaration of Human Rights, Cameroon has also signed a number of international and regional treaties which deal with the equality of the sexes. Some of these treaties to which Cameroon has acceded are: The Convention on the Elimination of all Forms of Discrimination Against Women; The Convention of the Political Rights of Women; The African Charter on Human and Peoples’ Rights, to mention just a few. The African Charter (as it is popularly referred to) has been incorporated into the 2008 amended Constitution of Cameroon.

Despite Cameroon’s ratification of most of these conventions, it is yet to fully abide by the dictates of the Conventions when it comes to the protection of the human rights of women. The women are still greatly being marginalized through obnoxious customary and traditional practices thereby dehumanizing and stripping them off, of most of their fundamental human rights. What then is African customary law that discriminates against women?

3. AFRICAN CUSTOMARY LAW

The term law is one of those terms which does not have a single definition. Over the years several attempts have been made by eminent jurists, anthropologists and philosophers but none of the definitions appear to win popular acclamation. It would therefore be futile to examine the various definitions of law within the context of this paper. Thus, to a layman, law may be understood as rules and regulations which guide human behavior, the breach of which the people of a given state or community may frown upon

¹¹ See Hoffman S., “*Duties Beyond Borders*”, Syracuse University Press, 1983 at p. 5. For more on the concept of human rights see, Tijani M. Bande, “*Human Rights and Democracy: An Exploration of the Social Economic Obstacles to the Realization of Social Justice in Nigeria*”, published in Human Rights Democracy and Development in Nigeria, Vol. 1, Lagos – Nigeria, pp 68-70.

¹² See the UN publication titled “*Teaching Human Rights*”, New York 1989, at p. 5.

¹³ See Mariam F. Hirsch, “*Women and Violence*”, Van Nostrand Reinhold Co. 1981, Introduction.

¹⁴ See Law No. 2008/001 of 14 April 2008

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and which such a state of community can enforce. In the past, some writers claimed that Africans do not have law, properly so called. This was because since African legal system did not possess things like a legislature, a court room, the police, people trained as lawyers and judges who settled disputes, then what they offered could not be described as law. African law was therefore seen merely as rules of custom. That is why the writers sometimes described African law as “native law and custom”.¹⁵ In fact, one such writer declared that “some simple societies in Africa have no law, although all have customs which are supported by sanctions”.¹⁶

Over time however, this view has been discarded. Scholars have now agreed that African law must not possess all the characteristics of European-type of law such as a legislature, a court room or written statutes. What matters is that African law should perform the function of regulating human behavior, for that is the basic function which law performs in every society. And since African customary law performs this function effectively, it is therefore law properly speaking. However, it has some characteristics which distinguish it from statute law or common law. For example, it is therefore passed from one generation to another by oral tradition. But this is not to say that, all customary law is always unwritten. In recent times, some customary law transactions for instance, sale of land have been reduced to writing.

Another important feature of customary law is flexibility. It changes with the demands of the society, therefore accommodating changing culturing norms and values. Thus, what was a valid customary law rule about one hundred years ago may cease to be so in this modern time. A good example was the killing of twins and persons that had leprosy. In some villages of the North West Region of Cameroon, lepers were isolated and lived very far away from the village and no mourn them after their death.

However, the irony is that in Cameroon, even though many customary rules have undergone some changes, the negative effect that customary law has on women’s lives never seems to disappear. Cameroon as a former British and French colony has received has received the English legal system (the principles of common law, the principles of equity and statutes of general application)¹⁷ and the French legal system (the French Civil Law) respectively. This leaves her with a bi-jural legal system and what is referred to as the Cameroonian legal system is substantially English common law and the French civil law. Yet, the influence of indigenous customary law on the lives of the people is so great that it would be safe to say that in social matters such as family life, the life of most Cameroonians is governed by indigenous customary law. Since Cameroon is a multi-ethnic, multi-cultural and multi-religious society, it follows that there is a multitude of indigenous customary law – over 250 in number. But even though they are many, there are many similarities between, so that at the end of the day, the experiences of virtually all of the women in Cameroon are quite similar, with little local variations here and there.

It must be pointed out that owing to the contact which Cameroonian culture has had with European culture, there is probably a slide difference in the experience of the urban woman as compared to women who live in rural areas. The Europeans brought with them Western Education, their legal systems, new religion – Christianity and this brought many changes in the way of life of many Cameroonians.

These changes affected some of the traditional ways of life in Cameroon. For example, some women received Western education, and could thus earn a living by engaging in work outside the home, like teaching and nursing. This has facilitated the means by which they perform their role as wives and mothers in the homes. And because they lived in urban areas, they can benefit from the availability of improved social amenities. By contrast, the women in the rural areas still live almost in the Stone Age. Example is the Baka pygmies of the Equatorial forest of Cameroon located within the East Region. They work hard on the farm, using ancient farming tools as well as looking after the family, yet they have no legal title after the farm produce.

Whereas a woman in the rural area may go through her entire life bearing great burdens and never have any respite, the urban woman, depending on her level of education can engage in entrepreneurship or white-collar jobs. In this way, she has a greater share in the product of her labour than the rural woman. The picture painted here of the urban woman should not be taken to represent the position of every woman who dwells in the township or city. As a matter of fact, a good majority of urban women due to rural urban – exodus are just as poor and deprived of the good life as are the rural women. Thus, what follows for discussion is the negative experiences which women endure under customary law in Cameroon.

4. WOMEN’S RIGHTS VERSUS CUSTOMARY LAW

4.1 The right of inheritance

A renowned legal scholar, Professor Umzurike, has observed that, “some African traditions support discrimination against women in such areas as inheritance, property ownership, consent for marriage...”¹⁸. This observation captures virtually all the problems suffered by women including the Cameroonian women, in total violation of their fundamental human rights and freedoms.

¹⁵ See J.N. Samba, “*The African Volkgeist*”, Benue State University Law Journal, Vol. 2 (2003), by PEACH GLOBAL PRESS, Makurdi –Nigeria, p. 4.

¹⁶ A. R. Raddiffe – Brown, “*Structure and Function*”, Kuper and Kuper (eds.). African law, university of California press, 1965 at p. 4.

¹⁷ See s. 11 of the Southern Cameroons High Court Law, 1955.

¹⁸ U. Oji Umzurike, “*The African Charter on Human and People’s Rights*”, Martinus Publishers, the Netherlands, 1997 at p. 57.

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Since Cameroon is a signatory to some international pacts on human rights concerning women, such as the Convention on the Elimination of All Forms of Discrimination Against Women and the African Charter on Human and Peoples' Rights, this implies that, equal rights of inheritance ought to be accorded to both the male and female children in the family. This position is supported by Articles 731-733 of the Civil Code applicable in Cameroon.¹⁹ According to Article 731, "*Succession devolves by law to the relatives and spouse entitled to inherit on the following terms*". While Article 732 on the other hand provides that, "*A surviving spouse non-divorced, against whom there does not exist an order of judicial separation having force of res judicata is a spouse entitled to inherit*". Finally, Article 733 declares that, "*Legislation does not discriminate between legitimate and illegitimate children in order to determine relatives called to inherit*".²⁰

Unfortunately, customary law in Cameroon appears to have ignored the protection of the rights of inheritance accorded to women and the girl child by the Constitution, the international conventions on human rights and the Civil Code. This is very common within the North West and Western Regions of Cameroon, even though, in the North West Region, female children within the Kom society²¹ and the Fulani communities (Bororos) are often given their own fair share of the property on the demise of the father. In most of these communities where the right of inheritance is denied a woman, she is ranked lower than the man in status. In other words, a woman does not have all the rights that a man has. Right from the time a female child is born, society, and therefore her parents show that even though she is welcomed, there would have been far more joy if she were a boy. As the girl child grows up in her father's house, she gradually learns that she will not inherit her father. She is expected to grow up and marry into another family. And since she will not carry on the family name according to tradition, what is the use of bestowing any property on her?

The male child on the other hand is automatically regarded as heir-apparent to his father, especially if he is the first son. As for the female child, it does not matter even if she is the first born of the family, she does not inherit her father's property. Where a man is "unfortunate" to have only female children, his brothers or other male relatives will inherit him on his demise.

Aside from the Kom tradition and the Fulani communities mentioned above, one is aware that there are other exceptions to this pattern of affairs among other ethnic groups in Cameroon like the Betis of the Centre and South Regions where the male and female children have almost equal rights of inheritance. But what we are saying is that in the majority of cases, the female folk is discriminated upon when it comes to inheritance.

Since the female child has no share in her father's estate, one would expect that in her new family as a result of marriage, she will be entitled to inherit her husband. But unfortunately, most customs still forbid her to do so. A wife does not fall heir to her husband's belongings. Most Cameroonian men even those educated when filling the employment forms for instance, indicate that their next-of-kin is their father, brother, uncle or the first male child of the family. Few give the names of their wives as their next-of-kin. For some, this may be due to ignorance but for a vast majority, even though they know that the implication of this is that if they should pre-decease their wife, she will not be entitled to any belonging, they still go ahead to exclude her from the list of their next-of-kin. We gathered from a random sampling that a man fears the fact that, after his death, his wife will squander whatever he labored for with "boyfriends". However, it is a known fact that the worst of women will still place her children at the top of the list of her priorities. Therefore, should not common sense compel a man to leave his property to his wife even if only for the benefit of his children?

Other provisions of the law violated with respect to women's rights of inheritance under customary law are those of Article 77 (2) of the 1981 Cameroonian Civil Status Registration Ordinance.²² The provisions of this Article give a woman the right to inherit her husband's property as well as the option to remarry upon death of her husband or stay celibate. The Article to be more specific provides:

In the event of the death of the husband, his heirs have no right over the widow or over her freedom or share of property belonging to her...

Furthermore, s. 46 (1) of the 1925 Administration of Estates Act, upholds the rights of a surviving spouse as the immediate beneficiary should a spouse die intestate. Despite all of these protection offered by the law, the Cameroonian woman is still being discriminated upon when her rights of inheritance are concerned with respect to customary law.

It is very interesting to note that even the courts on their part appear to have recognized some of these customary rules that dehumanize the woman by preventing her from inheriting either her father's or husband's property. Here, the Supreme Court of Nigerian has been blunt in a series of cases brought before it, involving women's right of inheritance under customary law. Considering the fact that most communities in Nigeria share common cultures and values with communities in Cameroon, some of the cases decided by the Supreme Court (Apex Court) of that country, could also be discussed here in a bid to show how the courts

¹⁹ (Act no. 2001-1135 of 3 Dec. 2001).

²⁰ The legitimate and illegitimate children referred to in Article 733, includes male and female children.

²¹ Succession within Kom Society is matrilineal while within the Fulanis, female children are given a share of the cows on the demise of the father. These are isolated cases.

²² The Ordinance has harmonized rights, issues and matters pertaining to family law in Cameroon.

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have also denied women the right of inheritance under customary law. First, in the case of *Nzekwu v. Nzekwu*,²³ the Supreme Court of Nigeria held that on her husband's death, a widow who has no male issue could only occupy the building or part of the building belonging to her husband, subject to good behavior on her part.

While in *Idehen v. Idehen*,²⁴ the Supreme Court excluded a woman from inheriting her late husband's property but ironically did not find anything wrong with a man inheriting from his wife. Furthermore, in *Suberu v. Sunmonu*,²⁵ Jibowu .F. held that: "... a wife could not inherit her husband's property since she herself is like a chattel to be inherited by a relative of her husband". Finally, in *Nezianya v. Okagbue*,²⁶ the Supreme Court continued to uphold customs inimical to the rights of women when it held that, a widow who had no male issue could not deal with her husband's property without the consent of his family.

From the above scenario, even the courts which are considered as the last hope of the ordinary man appear not to be helpful. In addition to the Constitutional rights of the women to own and inherit property, as well as the guarantees enshrined in the various international conventions and treaties, natural justice and equity demand that the rights of the women to own and inherit property should be upheld and respected under customary law.

4.2 Domestic violence and torture

Black's Law Dictionary briefly defines torture as, "the infliction of intense pain to the body or mind to punish ...".²⁷ Article 5 of the Universal Declaration of Human Rights for instance addresses the right of all against torture, cruelty or any type of inhuman treatment. On the other hand, Article 5 of the African Charter on Human and People's Rights takes a cue from here where it equally declares that:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of human particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited

Despite the foregoing protection, many women today in Cameroon are still considered as commodities under customary law and thereby subjected to inhuman degrading treatment through torture, beating and thereby stripped off, of the human dignity bestowed in them. Wife battery and domestic violence are almost the order of the day in most homes today, as most customs advocate that the only way of correcting a woman is by beating her.

It is very disheartening to note that the much needed laws against gender-based violence are hopelessly lacking in Cameroon.²⁸ Wife-battery, excision and the ill-treatment of the woman have become the order of the day in most homes today simply because the law has failed to address the special circumstances that give rise to such crimes. The absence of specific laws that regulate domestic violence is visibly noticed in Cameroon. The Penal Code of Cameroon in its sections 275 through 285 and s. 338 which cover general assault and battery crimes still do not provide enough protection against violence and torture.²⁹ There is need therefore for increased awareness against domestic violence as well as an increase in legislation punishing domestic violence and torture against woman. Even the assistance given to the victims by some NGOs is not enough. More of such NGOs should be created and their activities doubled.

4.3 A wife as part of property to be inherited by the man's estate

Under most customary law, particularly that of the North West Region, a wife forms part of property (object) to be inherited by the man's estate. In cases where a widow refuses to be inherited by her late husband's brother or other male relatives, she will be asked to leave the family compound. This is a gross violation of her fundamental right of the right to marry a man of her choice as provided by the UN Universal Declaration of Human Rights. Article 16 (2) most especially provides thus: "Marriage shall be entered into only with the free and full consent of the intending spouses". In most of the cases involved here, the widow does not consent to marry the late husband's brother or son where the man was a polygamist. This implies that, the widow is only left with tradition irrespective of even the circumstances of the new husband's health situation.

This customary practice is also seen to violate the provisions of Article 52 (4) of the 1981 Civil Status Registration Ordinance. The Article recognizes a woman's right to consent to a marriage. Thus, any marriage that is conducted without the consent of the

²³ (1991) 6 NWLR (pt. 198), p.382, SC.

²⁴ (1991) NWLR (pt. 198), p.382, SC.

²⁵ (1957) 2 FSC at p. 31.

²⁶ (1963) 1 All NLR at p. 352.

²⁷ Black's Law Dictionary, 1995 Tenth Edition, THOMSON REUTERS, at p. 1718.

²⁸ See Victoria .M. Time, opt. cit. at p. 2.

²⁹ Ibid

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woman be it under customary law or under statute ought to be null and void. Equally infringed by customary law are the provisions of Article 77 (1) and (2) of the same Ordinance:

According to Article 77 (1), in the event of the death of one of the spouse or of a legally pronounced divorce, the marriage shall be dissolved. While Sub (2) on its part maintains that, in the event of the death of the husband, his heir or heirs shall have no right over the widow nor over her liberty or over the property left by the deceased. She shall be free to remarry without any opposition and all she needs to do is to respect the 180 mourning days period after which she regains her freedom.

Attached to the customary belief of regarding the wife as part of property to be inherited, is the obnoxious and disgusting issue of mourning which women in some traditional societies in Cameroon have to contend with. For example, in most customs with exception of the Muslims, a widow is compelled to have her hair completely cut or shaven, wear black or white clothes, wear only old clothes and sleep on the floor for over a long period as a sign of mourning her husband. All of these are dehumanizing. Even amongst the Muslims, the widow stays indoors and is not seen in public for a very long period of time. This is a breach of the Constitutional fundamental right of freedom of movement. The mourning period with regard to some of these customs can go up to 365 days, whereas, Article 77 (2) of the 1981 Ordinance puts it 180 days. The 180 days here is the maximum period depending on the choice of the widow.

It is even contended that, sometimes widows are forced to drink the water that used to in washing the corpse of her deceased husband in a bid to prove her innocence that she did not kill him. This practice is not only peculiar to Cameroon. It is a common practice within most African traditional societies.³⁰

Unfortunately, men are not subjected to such ordeals when their wives die. As a matter of fact, in some of the communities, when a man's wife dies, he is provided with female company even on the marital bed during the mourning period. According to traditional evidence, his female lover is supposed to drive away the evil spirit of his dead wife as well as comfort him during the mourning period.

Most of these cultural practices have come about due to inter-ethnic interactions between the various ethnic groups. For example, female genital circumcision/ mutilation practiced in Manu Sub-Division of the South West Region of Cameroon, emanates from Cross River State and Akwa Bong State of Nigeria from where the Manu people originated.

4.4 The denial of the right to own property

Article 17 (1) of the UN Universal Declaration of Human Rights of 1948, provides that: "Everyone has the right to own property alone as well as in association with others". While Sub (2) declares that, "No one shall be arbitrarily deprived of his property".

Despite this lofty guarantee, the Cameroonian woman is still deprived by customary law from owning property. The general rule prevailing under most customs in Cameroon with the exception of tribes like the Betis and the Ewondos of the Centre and South Regions is that, a woman does not own landed property. Upon marriage, she is entitled to be sheltered by her husband. But even the room or apartment given to her by her husband for her exclusive use and enjoyment while the marriage subsists does not really belong to her. This is the position even under most customs in West Africa. Thus, in the Nigerian Yoruba case of *Oloko v. Giwa*³¹, the court held that, such an allotment of a house or a room by a man to his wife does not vest the house or room in her as her own separate property. In the event of a divorce, the woman is expected to vacate the house or room, and go away with only the belongings she brought with her at the beginning of the marriage. In some cases, a mean husband may prevent her from taking even her own personal belongings with her. These are her personal belongings acquired during the marital period.

4.5. The requirement to refund the dowry following a divorce

Divorce entails the legal dissolution of a marriage by the court. When used without qualification, the term divorce imports a dissolution of a marriage relationship between husband and wife, that is, a complete severance between the tie by which the parties were united.³² This is a definition in the strict legal sense of the word, as compared to what is obtainable under customary law. Under customary law, divorce needs not to be pronounced even by a customary law court. A simple misunderstanding by the parties can lead to dissolution of the marriage relationship.

Under customary law, one of the major issue that arise from divorce in Cameroon is that the family of the woman is required to refund the dowry or bride-price that was paid on her at the beginning of the marriage. This is not withstanding whatever contributions

³⁰ See Chief Mrs. Pricilla Kuye, "Rights of women Under Customary Law in Towards a Restatement of Nigerian Customary Law", Federal Ministry of Justice, Lagos, 1991 at p. 390.

³¹ (1939) 15 N.L.R. 13

³² See Black's Law Dictionary, opt. cit. at p. 582.

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she might have made to her husband's family, including bearing children for him. As long as the dowry is not refunded, she is prohibited from entering into another marriage contract with another man.

Since the payment of dowry is misconstrued under customary law and equally considered as the purchase price, the Civil Status Registration Ordinance applicable in Cameroon in a bid to protect the woman's dignity and other fundamental human rights appears to prohibit the payment of dowry. To this effect, Article 61 (2) of that Ordinance prohibits the payment of dowry as a condition precedent or necessary for a valid marriage. In line with the provisions of this law, we may state here without favor that the requirement of dowry as prescribed under customary law is a breach of a woman's fundamental right as a human being. A human being irrespective of age or sex should not be sold or bought. It is unfortunate that the courts in Cameroon have not given any assent to this argument and have rather affirmed the position under customary law, that the payment of dowry is a condition precedent for a valid subsisting marriage under customary law. This implies that until the bride-price is refunded, divorce cannot take place under customary law. This issue of non-refund of dowry under customary law came up in the case of *Maya Ikome v. Manga Ekemason*³³. In that case, the non-payment of dowry led the Buea Court of Appeal of the then South West Province of Cameroon to award property collectively acquired over thirty years of marriage by a widower and his deceased wife to the wife's family on the premises that the non-payment of dowry by the man invalidated the marriage.

We may once again resort to Article 77 (1) of the Civil Status Registration Ordinance which provides that in the event of the death of one of the parties or a legally pronounce divorce, the marriage shall be dissolved. The vexed problem is that, following customary law, once bride-price is paid, the woman becomes the man's "property" regardless of whether or not the marriage was celebrated by a civil status registration officer. Even where the marriage is informally dissolved by abandonment or by court process, the woman remains the "property" of the man if the dowry is not refunded. Even in situations where the woman remarries but dies, the former husband retains possessory rights over her corpse following the non – refund of his bride-price.

It is equally curious to note that even if the woman is not legally married to another man but goes on to have children while in her father's house; such children belong to her ex-husband, if the dowry has not been refunded. This position appears to be inimical to the concepts of natural justice, equity and good conscience and was thus rejected by the Nigerian Court in the case of *Edet v. Essien*³⁴, on the basis that the rule of customary law was repugnant to natural justice, equity and good conscience. To the court, the paternity of a child was and is based on blood and nothing else. But unfortunately, customary law is still at variance with this position of the courts. In some rural areas where people are not particularly aware of their rights and seldom seek redress in court, the practice lingers on.

4. 6. The denial of the right of custody of the children

Another problem area of a divorce is the question of the custody of the children. Under customary law, children belong to their father. So, a man can send his wife packing and restrain her from taking with her any children, including those of tender age. This is bone not because the mother has been found to be unfit to look after her children. All that the man wants to demonstrate is that he has power and authority over the woman. The interest of the children is of little importance to him. Where a woman is allowed to take an unweaned child with her, it may be due to the fact that there is no one in the man's family who is capable of taking care of the child. The divorced wife is not entitled to any maintenance allowance in the rare case where she has custody of the children.

In denying a woman custody of her children, a man creates the impression that the woman who bore them is just an object required to achieve the man's desire to have children who will carry on his name. The fact that the woman participated in creating her husband's wealth like aiding him to construct more rooms in his compound or have a bigger farm seems not to count in her favour at all. In the North West Region of Cameroon, the customary practice is that, the molding of sun-dry bricks for building during the dry season is the sole responsibility of the woman. Despite all her efforts, her contribution is not recognized.

4. 7 The violation of the consent requirement

Consent is a fundamental requirement in every contract, nor matter its nature. Marriage itself is a contract and requires the consent of all the parties to the relationship, including customary law marriages as well. Under English law the consent of both parties is a fundamental requirement for the celebration of any valid marriage. This is the same position with regard to statutory marriages in Cameroon. The effect of the absence of a valid consent of either of the parties nullifies the marriage. Thus, according to Article 1109 of the Civil Code, "there is no valid consent, where the consent was given only by error, or where it was extorted by duress or abused by deception". This is the situation with most customs in Cameroon. Under customary law, a young girl could be given out in marriage by her father or guardian to the man of his choice with or without the consent of the girl. This is very common within the muslim communities of Cameroon. It is equally an old tradition that has existed for many centuries amongst communities other than the muslims. In most cases where this happens, the girl is still underage. In some cases, the girl is given out to a man who is old enough to be her father or even grandfather. At times, the man ends up dying because he is too old while abandoning the girl as a widow for the rest of her life at a very young age, with probably young children to look after. Where the

³³ CASWP/CC/76/85 (Unreported).

³⁴ (1932) 11 N.L.R., 47.

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girl is too small, it is customary for the husband of the young underage girl not to immediately have sexual intercourse with her even though she is his wife. What happens is that the man will keep his young wife under the care of his older wife or wives or female relatives. She is then watched as she grows up. And as soon as she attains puberty, the man is notified and he immediately begins to have sexual intimacy with the girl, not minding that despite puberty, her body has not yet matured sufficiently to cope with the act of sexual union and its consequences. The result of the sexual union is that the young girl becomes pregnant and bears a child with dire consequences to her health. This is commonly practiced in chiefdoms where young teenage girls are offered to chiefs and fons as wives. These teenage girls are kept in the custody of older palace women until they reach puberty.

Pregnancy and childbirth at this tender age sometimes lead to the health problem known as “Vesico Vaginal Fistula”(VVF). Vesico Vaginal Fistula is the medical term for the injury which occurs to the bladder, urethra and the lower end of the bowel. It is a tear which causes constant leakage of urine and sometimes vaginal excretion of faeces. Medical experts explain that the injury occurs as a result of obstructed and prolonged labour due to the fact that the very young mother’s pelvis, not being fully developed yet, is too small to allow the free passage of the baby. A woman who is a victim of this injury generally suffers from constant infections and infertility. If she does not receive expert medical surgery, her whole life is ruined. For, the constant dripping of urine causes a whole foul smell which drives people away from staying close to her. Her husband in most cases is always the first person to avoid close physical contact with her. She soon becomes an outcast and cannot marry another man and she is forced to avoid the company of even her close relatives. In this way, her whole life is virtually wasted as she goes from one hospital to another trying to find a cure.

4.8 The violation of women’s right to education

The UN Universal Declaration of Human Rights in its Article 26 guarantees education for all irrespective of sex or gender. To be more specific, Article 26 (1) provides that: “Everyone has the right to education ... elementary education shall be compulsory ...”. Despite this fundamental guarantee, customary law in Cameroon still discriminate between the male and the female child when education is concerned. In the Northern part of Cameroon principally dominated by the muslims for instance, the percentage of female children that go to school is by far lower than the male children. Here, the girls and women are largely regarded considered as “objects limited to child bearing and looking after the home”. Because of these traditional believes, most of the women within the Northern part of the country cannot read nor write compared to their counter-parts in the South. Moreover, Islam sees education as a “Western Affair”. While Western Education exposes the woman, Islamic law restricts the woman’s exposure and thus keeps her under confinement.

However, the discrimination against women in matters of education is not only peculiar to the Northern part of the country. It is only more prominent there. Generally, under customary law, where a man does not have enough money to send all his children to school, he sends male children and leaves behind the female children even if they are more intelligent than the male children. The excuse is that the girl child is “someone’s property” upon marriage. That is, “she goes with the education”, while the male child shall remain and probably replace the father after the father’s death. His education remains family education and property. With this current customary law practice, the women in Cameroon do not occupy the same status with their male counter-parts in jobs distribution and social ranking.

5. CONCLUSION

We hereby conclude that the idea of women’s rights is not about having a competition between men and women. We do not believe that the common cliché that what a man can do, a woman can do better is true in every aspect of life. In nature, there are those things that a man can do, a woman can do better is true in every aspect of life. In nature, there are those things that a man can handle better than a woman and there are other things which women do better than men. It is all about roles assigned by nature or god, and the skill which an individual has in doing whatever task is at hand. We do not believe that if a woman prepares food, the husband should wash the dishes. But we do believe in the principle of division of labour and common sense. Let men be men and let women be women. What matters is treating each other with dignity and respect. Customary law should thus be treated with flexibility in a bid to accommodate socio-cultural changes.

It must be reiterated that denying women the exercise of their human rights is not peculiar to Cameroon and her various laws and practices. It is a well-known fact that all over the world, women experience discrimination based on no other reason than that they are women. However, in the 21st century, efforts are seriously being made especially on the part of the UN to eradicate the belief that women are created solely for serving the purposes of men. These efforts have met with a varying degree of success here and there in different parts of the world.

Accordingly, the emancipation of women is at different levels in the different parts of the world. Even in Cameroon, considerable progress has been made. Women’s contributions to national development have been recognized now and again. Many women are now holding positions of leadership and authority in all the three arms of government as well as in the private sector. This is still not enough. Women still deserve more than they are getting especially with respect to women’s effective political participation. For example, politics in Cameroon is almost an exclusive affair of the men, with very few or no women heading

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political parties. Thus, the constitutional /fundamental right of “equality of all before the law, is not necessarily equality in fact when it comes to political matters in Cameroon. What is left to be shown through recommendations is how the women’s fundamental human rights could be ameliorated through an improved customary law practices in Cameroon.

6. RECOMMENDATIONS

6.1 Government should mount an elaborate awareness campaign to educate the general public on the evils of discriminatory practices

We do recommend in strong terms that women should be singled out for special education. This is because, there are very many women who are ignorant of their entitlements in life. Many centuries of being brought up to believe that a woman is inferior to a man, have left their mark on the psyche of many women. The result of this is that in some cases, it is women themselves, who portray themselves or other women as being less than men. So, women need to be briefed on some of the wrong notions they have about life.

6.2 The score of rural women who are qualified should be empowered to participate in the formulation of Government policy and the implementation thereof

Here, the state can lead by example. The state should empower the rural women that have acquired a certain level of education to hold public office and perform all public functions at all levels of education. This is possible within Regional, Local Councils and Governments that operate up to the grass –root levels.

6.3 A strict enforcement of the laws that already exist in respect of discrimination against women

If customary law in Cameroon strongly discriminates against women today, it is because the already existing laws are not strictly being implemented. Most men and even the women themselves are not aware of their existence. Example of such laws are the Convention on the Elimination of all Forms of Discrimination against the Women; the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women, as they are the most relevant international instruments concerned with all forms of violence against women. Even the enactment of new legislation may not help matters since enforceability will be problematic thereby still creating room for violations. It is unfortunate that most of the international conventions are mainly declarations as they do not provide sanctions against defaulters. In this vein, there should be some local legislation to render these conventions compulsory as well as impose severe sanctions on erring members.

6.4 Banning of obnoxious customs

If customary practices like female genital mutilation, sleeping on the floor after the death of a husband, shaving hair after death of husband and drinking the water used in washing the husband’s corpse are still in high prevalence today, it is simply because parliament has actually not enacted any laws banning these practices. Most of the prohibitions are mostly Government Declarations that can sometimes not be enforced by the courts. New legislation should be enacted prohibiting these dehumanizing customs. In the case of child marriage, a minimum age for marriage should be fixed, thus making child marriage illegal and punishable by law. In Cameroon, the 1981 Civil Status Registration Ordinance appears to set the minimum age at 15 years for girls and 18 years for boys. But these ages are not respected mostly amongst the muslims simply because their marriages are mostly customarily-celebrated under strict Islamic rules. In addition to the new legislation, toughie laws should be passed to punish all those involved in the cultural practices listed above. The punishment should be certain, severe and swift.

6.5 Uniformity in the application of laws

The human rights laws as enshrined in the Constitution and other international treaties in order to be effective must be applied uniformly to like cases and must be enforced faithfully.

On a final note, the aim of highlighting customary practices which hinder women’s rights is to draw attention to the problem so that the above recommendations can be implemented to change the status quo. It is true to say that some people are not quite aware of what makes them think and behave as if women are subordinate to men. Awareness of the root cause of the problem can lead to soul searching which will throw up questions whose answers could lead to a change of heart and attitude. And the best place to start is the home. It parents raised their children by inculcating in them the fact that even though boys and girls are differently made, and even though they may perform different roles in life, neither one nor the other is superior to the other, the younger generation of Cameroonians will grow up without the attitude of discrimination based on sex. They will learn to base their evaluation of a person, whether male or female not on the person’s gender but rather on his or her personal attributes, skills and capabilities.