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African Law and The Status of Women's Access to Justice in Cameroon

TCHANA Anthony NZOUEDJA, PhD

Lecturer, Department of French Private Law, Faculty of Laws and Political Science, University of Buea, Cameroon

ABSTRACT: The sources of law in most African countries are customary law, the received laws and legislation both colonial and post-independence. In a typical African country as is the case with Cameroon, the great majority of people conduct their personal activities in accordance with and subject to customary law. Customary law has great impact in the area of personal law in regard to matters such as marriage, inheritance and traditional authority, and because it developed in an era dominated by patriarchy some of its norms conflict with human rights norms guaranteeing equality between men and women. While recognising the role of legislative reforms, it is argued here that the courts have an important role to play in ensuring that customary law is reformed and developed to ensure that it conforms to human rights norms and contribute to the promotion of equality between men and women. The guiding principle should be that customary law is a living law and cannot therefore be static. It must be interpreted to take account of the lived experiences of the people it serves.

KEYWORDS: Access to Justice, African Law, Human Rights, Equality, Court

I. INTRODUCTION

Cameroon is a legally plural state where several different legal and normative systems operate alongside others.[1] The interaction of legal system is complex and often engenders conflict and competition. This article deals with the relationship between African law[2] and women's right to access justice in Cameroon and examines the ways in which conflicts between the different legal systems impact on human rights of women in the country. The Cameroonian Constitution contains provisions guaranteeing equality, human dignity, and prohibiting discrimination based on gender.[3] However, the same constitution makes implicit recognition and application of customary law norms which are in line with democratic principles, human rights, and the law.[4] This article examines the tensions that exist between customary law and both domestic and international human rights norms. It is important to evaluate customary norms in the context of human rights because legal norms capture and reinforce deep cultural norms and community practices. While customary law emphasizes on rights in the context of the community and kinship rights and duties of individuals to their communities, human rights norms typically enjoin states parties to eliminate discrimination against women.[5]

II. GENDER EQUALITY AND ACCESS TO JUSTICE

A growing number of international policy and legal instruments, including the Convention on the Elimination of all Forms of Discrimination against Women, and the UN Security Council Resolution on Women, Peace and Security, and their related processes,

[1] Customary law received foreign laws and local legislations are applicable in Cameroon. See sections 14 of the Evidence Ordinance Chapter 62, section 11 and 15 of the SCHCL, 1955, and the Constitution of Cameroon on local legislations.

[2] African law in other words refers to Customary Law.

[3] The preamble of the 1996 Constitution as amended which by section 45 of same is made part and parcel of the constitution.

[4] Section 2 of the 1996 constitution as amended.

[5]See generally United Nation Convention on the Elimination of all forms of Discrimination against women, adopted and opened for signature and ratification by General Assembly resolution 2106 A (XX) of 21 December 1965. Entered in force on 4th January 1969, in accordance with Article 19. Adhesion by the State of Cameroon on 27 June 1984. Article 2 of the convention calls on State parties to condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and institutions, national and local, shall act in conformity with this obligation; Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organisation; Each State party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exist; Each State Party undertakes to encourage, where appropriate, Integrationist multiracial organisations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division

have emphasised that access to justice for women and girls is not only a right in itself, but also an essential factor in the enjoyment of other rights, and factor in sustaining peace and sustainable development.

Cameroon's contemporary legal landscape has been influenced by colonialism. The colonial occupation of Cameroon by the Germans, and later the British and French during World War I[6] led to the imposition of western legal models[7]into the territory, which, hitherto, had known only a fragmentary system of norms, based on native laws and customs. The various constitutions adopted since independence have maintained the pre independence laws observed in the territory. After independence in 1960, Cameroon incorporated into its developing body of municipal law a series of human rights instruments, including the Universal Declaration of Human Rights (UDHR) 1948,[8]the International Covenant on Civil and Political Rights (ICCPR) 1966,[9]the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966,[10]the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)1979,[11]the African Charter on Human and Peoples' Rights (ACHPR) 1981,[12]and the Convention on the Right of the Child (CRC) 1989.[13] Upon ratification, these international instruments are incorporated directly into the body of municipal law and are ranked over and above domestic legislation pursuant to article 45 of the 1996 Constitution (as amended) and have direct effect. Indeed, whether Cameroonians can invoke rights and be subjected to duties arising from such treaties and conventions which in the view of this article are questionable.[14]

Cameroon's legal system thus consists of a plurality of rules with received colonial laws, municipal legislation, human rights and customary laws co-existing and interacting with each other.[15]The existence of a plurality of rules in the legal system poses theoretical and practical problems. One of the most persistent, and perhaps, intractable problems is the difficulty in unifying the legal process. The problem is more visible in Cameroon since the unifying process involves reconciling conflicts between the various customary laws and to bridge the gap existing between French and English inspired legislations. This challenge has led to conflicts amongst laws in Cameroon.

Customary Law is imbued with discriminatory structure, it is patriarchal in nature and perceived as a way of looking at the world from the vantage position of men in traditional African and mostly, non-Western societies. In this connection, it is frequently looked upon as discriminatory towards women, primitive and agrarian in conception, unsuitable for demands of the capitalist

[6] V.J. Ngoh., History of Cameroon since 1800 (Limbe: Presbyterian Printing Press Limbe, 2002) P. 121

[7]Ibid

[8] Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948. Adopted by the State of Cameroon by State Succession on the 20 September 1960. Article 1 States that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherly hood.

[9] Adopted and opened for signature, ratification and accession by General Assembly resolution A/2200 A (XXI) of 16 December 1966. Entry into force: 23 March 1976, in accordance with Article 49. Adhesion by the State of Cameroon on 27 June 1984

[10] Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/2200A(XXI) of 16 December 1966. Entered into force on the 3rd of January 1976, in accordance with Article 27 and adhered to by the State of Cameroon on 27 June 1984

[11] Adopted and opened for signature, ratified and accession by General Assembly resolution 34/180 of 18 December 1979. Entry into force on the 3rd September 1981 in accordance with Article 27(1), ratified by the State of Cameroon on 23 August 1994. Article 2 enjoins State parties to condemn discrimination against women in all forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

[12] Ratified by Cameroon on the 210th of June 1989

[13] Adopted and opened for signature, ratification and accession By General Assembly resolution 44/25 of 20 November 1989. Entry into force on the 2nd September 1990, in accordance with Article 49. Ratified by the State of Cameroon on 11 January 1993

[14]In *SYNESS v. The Government of Cameroon*, Case 1699 ILO Administrative Tribunal, the Union of teachers of Higher Education sued the State of Cameroon for failing to recognise it as a union and for the harassment of its members. The Union relied on its application for registration as the basis of its existence. The government contended that the union had not been registered in accordance with the various statutory provisions in the country regulating the registration of Trade Unions under the labour Code of Cameroon (law No 92/007 of 14 September 1992). In spite of the government's contention above, the Administrative Tribunal held that the union had legal existence. The Tribunal went further to direct that the State of Cameroon to revise its legislation on this matter to bring them in line with obligations assumed under Convention No. 87. However, the State of Cameroon irrespective of the directives has remained silent.

[15]Cameroon has over 250 different tribal communities exercising a disparate array of customs and tradition. Consequently, therefore there are as many customary laws as are the number of ethnic groups in Cameroon. Following section 14 of Evidence Ordinance Chapter 62 a custom may be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence. The application of English law (both pre-and post-Independence) finds justification in section 11, 10, 15 and 22 of the Southern Cameroon's High Court Laws (SCHCL) 1955. Article 26 of the 1996 constitution as amended also empowers the parliament to pass Bills on matters exclusively reserved to the legislative power. Article 27 also states that matters not reserved to the legislative power shall come under the jurisdiction of the authority empowered to issue rules and regulations.

economy, a hindrance to national development and flagrant challenge to some of the core constitutional values of the country.[16]Due to some of these negative features, there is a strong prejudice against customary law in favour of human rights. Nonetheless, Customary Law continues to play a crucial role in Cameroon.

III. THE CONFLICTING APPLICATION OF CUSTOMARY LAW IN THE ERA OF HUMAN RIGHTS

Human rights norms proceed on the basis that women's rights under international conventions are universal norms to which all countries must adhere,[17]women are entitled to the exercise of their human rights and fundamental freedoms within the family and society. Human rights norms also proceed on the basis that the protection of the family as a social unit should not be used to justify restrictions on the individual rights of family members. The deference in approach has resulted in clashes between customary law norms on one side, and internationally protected human rights norms and national legislations which are inspired by international norms on the other.

There has been a strong opposition to the change of African customary law, as B.A. Rwezaura[18] has observed, the opposition to change is based on an ideology that characterizes attempts at reforming customary law as contrary to African traditions and culture and an attempt to westernise African society.[19] In defense of customary law, Cobbah[20] exemplifies this reaction. He states that.

It is my contention that to correct injustice within different cultural systems of the world it is not necessary to turn all people into Westerners. Western liberalism with its prescription of human rights has had a worthwhile effect not only on westerners but on many peoples of this world. It is, however, by no means the only rational way of living human life . . . Instead of imposing the Western philosophy of human rights on all cultures one's effort should be directed to searching out homeomorphic equivalents in different cultures. In other words, we should understand that homeomorphism is not the same as equivalence and strive to discover peculiar functional equivalence in different cultures.[21]

This reaction to efforts at reforming African customary law is often accompanied by an almost religious exhalation of the virtues of traditional system of law. While it is imperative that we draw attention to the fact that most Western understanding of African customary law are influenced by their negative attitudes toward all things African, it is important to realize that African theory and practice have been influenced and have become part of the global movement for the globalisation of human rights. By enthusiastically joining international human rights movements and adopting African Human and Peoples' Rights Charter,[22]and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,[23] African states are embracing the international human rights movement and its universality.

While recognising the important role legislation can play in law reform, it is argued that the fight for gender equality needs to move to the courts. The challenge is how to ensure that courts interpret the law in such a way that gender equality is advanced. This will require social movements to put pressure on the courts and society to act in the interest of gender equality. This suggests that we need to improve access to courts so that women can bring claims based on discrimination, thereby giving opportunities to the courts to reform the law. One way of encouraging the courts to interpret customary law in accordance with human rights norms is to show that the traditional social and economic relations on which the customary norms that discriminate against women are founded, and on which traditionalist rely to opposed reform, have in reality been radically transformed. This will enable us show that the values used by traditionalists to support customary legal norms that discriminate against women are no longer practiced in

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[16]Sebastian Poulter., "An Essay on African Customary Law Research and Techniques: Some Experiences from Lesotho" *Journal of Southern African Studies, Vol 1, No 2* (April 1975), pp. 181-193

[17] Marsha A. Freeman, international Women's Rights. Action Watch, Human Rights in the Family: Issues and Recommendations for Implementation, Article 9, 15 and 16 of the convention on the Elimination of All Forms Discrimination against Women 1 (1993)

[18] B.A. Rwezaura., Traditionalism and Law Reform in Africa 539 (Jan 28, 1983) (paper presented at a seminar jointly arranged by the Fundamental Rights and Personal Law Research Project, Centre for Applied Social Sciences, and the Department of Law, University of Zimbabwe)

[19]Ibid

[20] Josiah A.M. Cobbah., *African values and Human Rights Debate: An African Perspective*, 9 HUM. RTS. Q.309,328-29(1987) R

[21]Ibid

[22] Adopted in Nairobi June 27, 1981, entered into force October 21, 1986

[23] Considering that Articles 66, 2, 18, 60 and 61 of the African Charter on Human and Peoples Rights provides for special protocols or agreements, if necessary, to supplement the provision of African Charter, and that the Assembly of Heads of State and Government of the Organization of African unity meeting in its Thirty- first Ordinary Session in Addis Ababa, Ethiopia, in June 1995, endorsed by resolution AHG/Res.240 (XXXI) the recommendation of the African commission on Human and Peoples' Rights to elaborate a protocol on the Rights of Women in Africa; Article 2 of the African Charter on Human and Peoples' Rights enshrines the principle of non-discrimination on the grounds of race, ethic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status; article 18 of the Charter call on State parties to eliminate every discrimination against women and to ensure the protection of the right of women as stipulated in international declarations and conventions.

their existing form by communities. For example, Cameroon has made a strong criticism of the institution of bride price, based on the changed social and economic relations prevailing today.[24]

Quite apart from the above, gender discrimination under customary law is still partly founded on the notion of dowry. Indeed, under most customary laws of Africa in general and among all ethnic groups in Cameroon, dowry is used as a measure to justify certain discriminatory practices against women. Under Customary Law, dowry has great significance. The Court of Appeal Southwest Region had in *Kwela Theresia Amih v. Smith Sam*,[25]explained the role of dowry in customary marriages thus:

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 one custom to other, but in most cases the dowry is paid to the parents and family of the woman, and not to the woman.

Generally, dowry is the symbolic act that validates a customary marriage and signifies its dissolution: in principle, only on full payment of dowry by the bridegroom –to – be could there be said to be a valid marriage.[26] Conversely, only on the full refund of the dowry by the wife to the husband could a marriage be considered terminated. However, in situations where no dowry is paid, logically, none will be refunded. Because of the serious consequences attached to dowry, it was held by the Muea Customary Court in *Musanga Mendi v. FingeMenching*[27]that a father may sue his son -in-law to be to repay the part dowry that was paid on his daughter's behalf, so as to clear any obstacle on her path, should she decide to marry someone else. The father of the woman sued his prospective son-in-law to appear in court and receive the dowry that he had paid for the daughter. Because the daughter was about to marry someone else, there was a need to refund the dowry received from the previous suitor, so as to clear her path to marrying the new suitor. Arguably, dowry is the root cause of the problems facing women in traditional African societies,[28] and may have influenced their status vis-a-vis property, as revealed in *Achu v Achu*.[29]Once dowry is paid, a woman becomes part of her husband's estate. Given this, upon divorce, she leaves the matrimonial home with virtually nothing, except her private and personal belongings[30].

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.[31]In fact women are considered as legal minors. In the event of death of her husband, a widow may be inherited along with other property by her husband's relatives. The practice of levirate is widespread in certain regions in Cameroon and is classified as forced marriage. The widow finds herself in a difficult situation made worst by the fact that dowry was paid on her behalf before the solemnization of her marriage.[32] Thus, the

[24] Section 72 of Law No 81/2 of 29 June 1981 Organizing Civil Status as amended condemns all customs that runs against public policies. It provides that the total or partial settlement of a dowry shall under no circumstance give rise to natural paternity which can only result from existence of blood relations between the child and his father. In the same spirit, section 70(1) of the same law provides that the total or partial payment of dowry or – non- payment of dowry, the total or partial execution or non – non execution marriage agreement shall have no effect on the validity of the marriage. Any action brought against the validity of a marriage as a result of the total or partial failure to execute a total or matrimonial agreement is rejected on grounds of public policy.

[25] Suit No CASWP/CC/86/95 Unreported

[26]The practice of bridal payment has from time immemorial remained an important feature of heterosexual marriage in many human cultural practices. In contemporary African society, bridal negotiation and payment are regarded as central evidence of the establishment and legality of such union. Once bride price is paid on the woman, she automatically becomes property of the husband. See Helen NamondoLinonge- Fontebo., The implications of Bride Price Practices on Marriage Institutions in the Bali Lyonga Culture- North West Region of Cameroon, Unpublished M.Sc Thesis, Department of Women and Gender Studies, faculty of Social and Management Sciences, University of Buea, November, 2018 at 19-20

[27] Suit No 19/92-93 Unreported

[28] E.N Ngwafor., *Family Law in Anglophone Cameroon* (Canada: University of Regina Press, 1993) P 9-10

[29] Suit No BCA/62/86 Reported by E.N Ngwafor., *Family Law in Anglophone Cameroon* (Canada: University of Regina Press, 1993) at 196. "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. That conception is underscored by the payment of dowry on marriage and the refund of same on divorce.

[30] The real prejudice begins to creep in when the woman gets married. It would appear due to the traditional standpoint that by getting married, a woman tacitly gives up her rights to property, especially landed property. The husband as the head of the household manages everything even when it is the woman who buys it, or provide the money, the property so ends up in the husband's name. a case in point is *Anita Fri Nkwenti v. Mathias Nkwenti*, HCB/36MC/91 Unreported where the husband was a never do well. He ruined two taxis which the wife bought for him and ended up chasing her out of the matrimonial home which she built with the help of her family. The husband then took advantage of his wife's absence to sell the matrimonial home and all household properties. Generally, the court does not get to try disputes between husband and wife while the marriage is subsisting. Most women are afraid of taking their husbands to court for fear of losing their marriage. Property rights usually come up on divorce or in succession or not at all. See HCF/38/96 Between *Lucy Abah Kang Nsume v. Kang Nsume* (Unreported) was a particular case in which the divorce was head in the customary court and the property adjustments were decided upon the High Court.

[31]F. Lotsmart, I. Sama-Lang, L. Fombe and T. Ramata., "Land Tenue Practices and Women's Rights to Land in Anglophone Cameroon". *International Development Research Centre (IDRC)*, 2013 p 23-27

[32] See section 356 of the Cameroonian Penal Code 1967 as amended.

death of the husband does not terminate the institution of marriage under customary law. This is one of the motivating factors for criminalising forced marriages.[33]

Further, Customary Law advocates early marriages. A girl child before the age of puberty or below the statutory prescribed age can be married off, especially to a well-to-do suitor. This practice is compounded by the perception of women in traditional societies. Girl children are perceived to be a burden to their families and as objects to be used for the generation of wealth.[34] Like force marriages, early marriages are prohibited in Cameroon,[35]but the practice is, unfortunately, still regularly observed in rural settlements.[36] Early marriage denies women their basic rights, including the possibility of having an education, making them wholly dependent on their husbands.

In spite of the women's rights and the talk of gender equality and non-discrimination outlined in both domestic and international instruments, the struggle towards elevating the socio-legal status of the Cameroonian woman remains an uphill task. The fact remains that a woman, whether she be just a girl child, or a wife, is generally regarded as a source of wealth and subject of male dominance and exploitation.[37]That is to say a man derives so much convenience and material benefit from dominating the woman. Women act as housekeepers, cooks, babysitters, child bearers, extra labour in the man's cash crop farms. Providers of subsistence food crops, extra income from bride-price and when they are generally employed additional income for the family. For these reasons, it is the argued here that one of the greatest hindrances to the elevation of the women's legal status is the fact that men are unwilling to give up a social structure they find comfortable.

The factors which prevent the woman from attaining her human rights in our present social structure range from the law itself, lack of necessary laws on burning issues, inability to enforce already enacted laws, the defiance of contrary customary laws and practices and the ignorance, legal illiteracy, poverty and compromise of women themselves.

i. Customary Law and practices as hindrance to human rights enforcement.

One of women's greatest problems is the application of customary laws to the legal status of a woman as a contradiction to the direction of the law and social reality. Custom is a usage or practice of society which, by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of law with respect to the place or subject matter to which it relates.[38]It is argued in this article that, the test often cited to justify custom is that it is somehow in the best interests of the society. This line of reasoning has often been invoked to deny women certain rights. Customary laws and practices are applicable in our Common Law courts by virtue of section 27 of the Southern Cameroons High Court Laws and the Magistrates Courts Law if only they are "*not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law in force."* Law No 79-4 of 29June 1979 on the Organisation of the Customary and Alkali Courts in Anglophone Cameroon as well Decree No 69/DF/544 of 19th December 1969 on the Organisation of Traditional Jurisdictions in East Cameroon (Civil Law Cameroon) both insist that the courts shall apply the customs of parties which are not contrary to law and public policy.

From the cases of *Babey Ekoume v. Marie Ebenye*[39]and *Ministere Public v. Andre*[40]it is settled law that any customary law which is contrary to the notion of the "*Ordre Publique*" or *Bonnes Moeurs et Ordre Publique*" shall not be enforced. However, the general tendency in all our customary practices which cut across the nation is to foster gender inequality and promote male dominance and in so doing suppressing the woman, degrading her status and most often hurting her person. A lot of these customs amount to outright misdemeanour and felonies which one need no special legal training to know that they are contrary to natural justice, equity and good conscience. Take for instance the practice of excision (female circumcision)[41] depriving a woman of a part

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[33] Ibid

[34] F. Lotsmart, I. Sama-Lang, L. Fombe and T. Ramata., "Land Tenue Practices and Women's Rights to Land in Anglophone Cameroon". *International Development Research Centre (IDRC)*, 2013 p 26.

[35] See section 52(1) of Ordinance No. 81-12 of 29th June 1981 as amended which is to the effect that "No Marriage may be celebrated if the girl is a minor of 15 years old or a boy of 18 years old, unless for serious s reasons, a waiver has been granted by the president of the republic. This exception to age is to this researcher a deliberately influenced by the administrative arm of government in an attempt to disregard the law.

[36]Etali Genesis Akwaji., "Addressing child, Early and force Marriage in Cameroon" available at www.kota-kota-alliance.org (accessed on the January 6, 2024). In Cameroon forced early child marriage, modern day slavery and child sexual abuse is very prevalent and predominantly in the rural areas of the country. These rural communities are besieged by limited access to information, ancient traditions, ignorance of existing national and international legislation on child marriage, and an ever-increasing orphan population that is vulnerable and susceptible to forced marriages and abuse.

[37] . Lotsmart, I. Sama-Lang, L. Fombe and T. Ramata., *Land Tenue Practices and Women's Rights to Land in Anglophone Cameroon*. International Development Research Centre *(IDRC)*, 2013 p 26

[38]B. Garner., Black Law Dictionary, Ninth Edition P. 442-443

[39](1979) REVUE Camerounaise de droit 366,371

[40](1975) R.C.D 342, 345

[41]Cameroon is totally committed to the promotion and protection of human rights. Activities carried out to protect women, girl child and children has been very glaring in the recent years, with emphasis laid on female genital mutilation which has caused untold havoc to some girls and women in some parts of Cameroon. Government action in areas where the prevalence rate is high has greatly

of an essential organ. That is assault occasioning grievous harm, contrary to and punishable under section 277 of the Penal Code. In defiance of the few salutary laws protecting the woman, she continues to be oppressed and suffers under the yoke of repugnant customs because society has been brainwashed by customs which are linked with ancestral worship and the fear of witchcraft.[42] The situation is worse, confounded by the fact that even our courts of modern jurisdictions (Common Law and Civil Law) have been brainwashed by custom to the point where they are at some given moment unable to apply equity and good conscience properly.[43]The most obnoxious customs are customs related to bride-price which invariably cover marriages, child birth and paternity, widowhood and property.

ii. Customs Relating to Bride Price

The legislators have in section 70(1) of the Civil Status Registration Ordinance 1981 as amended has done well to enact that bride price will have no effect on the validity of marriage but in practice the story is different. The traditional position in most cases still stands as bride price is still the be all and end all of marriages. The position succinctly put is this:

No bride price, no marriage, where bride price has been paid, there is a marriage which subsists so long as it is not refunded.[44]

The most alarming instances are when our modern law courts, which are supposed to apply the written law, equity and good conscience bow to customs that are manifestly incompatible with policy and against written law. The case of *Maya Ikome v. Manga Ekemason*[45] is a glaring example, the deceased woman and her husband had been married for thirty years and had their marriage blessed in church. Upon her death her family sued for her property claiming that they did not know her to be married because bride price was not paid by the appellant. The Customary Court dismissed their claims and held that there was evidence of marriage from the marriage certificate. In setting aside the judgment of the court below, the Buea Court of Appeal held that the marriage certificate "*is only prima facie evidence of marriage"* and that since bride price was not paid, the registry marriage, the marriage certificate, the blessing of the marriage in church and the subsequent living together as man and wife for thirty years *"did not perfect what was already an imperfect union"* so saying, the Court of appeal disinherited the widower/appellant and gave the deceased's property back to her family.

iii. Bride price and monogamy

Under Section 49 of the Civil Status Registration Ordinance, polygamy is supposed to be an option and not a must. However, the Cameroonian man is, by nature, polygamous as was held by Justice J.P. Nganje.[46] Even where a man opts for monogamy, there is no guarantee that he will not one day relapse into polygamy. The payment of bride- price creates an unequal status for women. There is a practice particularly in Anglophone Cameroon which makes nonsense of monogamy at the end of the day and creates a good excused for bigamy.[47] The Civil Status Officers and Secretaries do not in some cases understand the notion of community or separate property, they would enter "according to the native laws and custom" Monogamy.

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contributed to the dwindling of the practice. Female genital mutilation and circumcision is an expression that describes social and traditional actions performed for the removal of the clitoris and inner lips; labia minora as well as part of the outer lips, labia majora. This act which is an outright violation of human rights is still practiced in some parts of the Southwest (Ejagham, Manyu Division) and the Northern Regions (Logone and Chari Divisions) of Cameroon. Practitioners who are in favour of the practice holds that it is a cultural value that should upheld for it is performed on the girls and women on cultural and traditional beliefs, that the process signifies a rite of passage from girl to womanhood. This is not reasonable as cultural values in traditional African societies should uphold dignity to humankind rather than deteriorate human health. The act of mutilating the female genitalia causes acute pain and is a violation of the right of young girls. Victims often have a deep and lasting negative impact on their health, their rights to enjoy sex is violated as sexual intercourse becomes painful etc. Custodians of the tradition who are in favour of the practice are conflicting with the government. See www.cameroon-report.com (Last date visited 08/10/2023)

[42]Ibid

[43]There seems to be no hope of redemption for the woman however when she seeks redress in modern law jurisdictions and the judge who ought to apply equity and good conscience as well as the written law, becomes an advocate for customs. One such decision was in *Mary AyabaAzwe v. John AyabaTebid*Suit No CASWP/32/96 of 22nd January 1997 where the Court of Appeal ordered the appellant to pay back her bride price assessed and fixed at three Hundred Thousand (300.000) francs plus cost of One Hundred (100.000) francs before her husband would allow her to collect her belonging from the matrimonial home. The judge in the instant case actually took cognisance of and addressed his mind to section 73 of the 1981 Civil Status Ordinance as amended but went ahead to rule that there was no evidence that the appellant's father had contributed to the divorce and since she had wilfully left the house of her own accord, she should pay.

[44]See *Maya Ikome v. Ekemason,* Suit No CASWP/CC/76/85 Unreported

[45]Ibid

[46]*Motangav. Motanga,* Suit No HCB/2/76 Unreported

[47]E.N Ngwafor., *Family Law in Anglophone Cameroon*, (Canada: University of Regina Press, 1993), P 39

A series of decisions have come out of the High Courts and the Courts of Appeal to the effect that "Monogamy according to native laws and custom" is polygamy, as our native laws and customs know no notion of monogamy.[48] The effect is that in the event of trouble or litigation arising from such a marriage, the marriage is declared polygamous in total disregard of the position of the woman. The most shocking of the decisions based on the above superfluous and gratuitous interpretation was the case of *Temple Cole v. Temple Cole*[49]where no custom was written on the marriage certificate but the Buea Court of Appeal went ahead and dug into the history of the matter and, found that bride price was paid, and held that it was a customary marriage and the Customary Court had jurisdiction to determine the matter.

If the above decision is anything to go by, then no Cameroonian woman can comfortably say she is monogamously married because almost all Cameroon weddings are either preceded by or followed by the payment of bride price.

iv. Bride price and widowhood

By virtue of Section 77(1) of the Civil Status Registration Ordinance 1981 (as amended), the death of a woman's husband dissolves the marriage, ends the relationship and any obligation that arose from it. Section 77(2) goes further to provide:

In the event of the 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. She may, provided that she observes the period of widowhood of 180 days from the date of the death of her husband, freely remarry without anyone laying claims to whatever compensation or material benefit for dowry or otherwise, received either at the time of engagement, during marriage or after marriage".

If the above law were to be properly applied then the widow has the following rights and freedom: freedom from the bonds of the marriage to her deceased husband, the right to a brief period of mourning, the right to remarry after six months, freedom from having to marry any of her deceased husbands male relatives, she is absolved from returning the bride price, the right to a share of the property.

However, in practice, custom has definitely and successfully rendered the above law impotent. All over the country widows fester under the yoke of oppression and inhuman torture.[50] Death is viewed with superstition and widows succumb to most of these practices for fear that if they resist, they might never be cleansed, and a worse fate might follow them and their children. The Bakossis and some Bakweri clans of the Southwest Region confine the widow in a room with a smoking fire which makes her eyes weep all the time. Some go as far as making the widow eat a frog or pay a fine in order not to eat it. All these practices amount to tort and offences of assault,[51] false imprisonment[52] and extortion,[53] to name a few. But the arm of the law is stayed because the widows do not seek redress in the court of law**.**

v. Customary Law, Bride price, Women and Property

In defiance of all our salutary laws in favour of women owning property,[54]the Customary Law position is that once bride price is paid to the woman's family, she and all that she begets including her children become the husband's property and as such property cannot own property.[55] This trend of decisions from our courts and our jurisprudence keep averaging on the pendulum. While one set of judges hold the notion of woman being property to be contrary to the written law and repugnant to natural justice, equity and good conscience, the other set of judges subscribe vehemently to Customary Law and are unwilling to discard their strong beliefs in the face of written law. A case in point is that of *Rose Ndollo Achu v. Richard A. Achu*[56]where his Lordship O.M. Inglis J. had this to say:

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[48]*Tufon v. Tufon* Suit No HCB/59/MC/83 (Unreported),*Kumbongsi v. Kumbongsi*Suit No CASWP/4/84 (Unreported), *Lyonga Christina Nee Nanyongo v. Lyonga* Suit No CASWP/CC/5/94 and *Mary AyabaAzwe v. John Ayaba Tebid* Suit No CASWP/32/96. As professor E.N Ngwafor puts it, monogamy according to native laws and customs is "nothing short of a wanton contradiction" see E.N. Ngwafor., *Family law in Anglophone Cameroon*, (Canada: University of Regina Press, 1993), P 39

[49] CASWP/CC/21/94 Unreported

[50]Canada's High Commission to Cameroon, through the Canadian Fund for local initiatives, is supporting local Human Rights groups in their efforts to end the plight of widows and the child trafficking occurring as a result of these traditional customs. High Commissioner Rene Cremonese joined these groups in promoting human rights in the municipalities of Bamenda and Wum in the Northwest Region. For widowed women in Cameroon's Northwest Region, losing your husband often also means losing your property rights, your home, land and sometimes even your children. Although protected by Cameroon's inheritance law, widows and their children often find themselves at the mercy of their communities and are treated without regard for their basic human rights. See www.dainternational.gc.ca (last visited on the 13/12/2023)

[51]See sections 278 on assault occasioning death, 279 assault occasioning grievous harm, 280 Simple harm and 281 Slight harm of the Penal Code.

[52]See section 291 of the Penal Code on false arrest and deprivation of liberty.

[53]See section 308 of the Penal Code

[54]See the preamble of the 1996 constitutions and all duly ratified human rights instruments which by section 45 of the constitution is ranked higher than local legislations.

[55]*Achu v. Achu*Suit No BCA/62/86 (Unreported)

[56]Suit No BCA/62/86 of Monday 20th June 1988 (Unreported)

Here 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. That conception is underscored by the payment of dowry upon marriage and the refund of same on divorce.

In some cases, the Court of Appeal has even trampled where the customary courts themselves failed to tread. In *Ngitedem v. Tashi Lydia*[57] the Customary Court actually gave the wife one of two houses which she helped to build (an uncompleted house) and the following household articles: a standby fan, a baby bed, a family bed, one radio and all kitchen utensils. The husband immediately appealed. Inglis J. held that the Customary Court had no jurisdiction to share property especially landed property upon divorce and that no equity could apply in the circumstances. He accordingly set aside the order awarding the house to the woman. As put[58] *"if the legislator thought he had buried bride price, it is still ruling us from the grave."* This decision, as per this article, is an unfortunate one that violates the rights of women to own property.[59]

IV. THE JUDICIAL PROPENSITY FOR WOMEN'S HUMAN RIGHTS IN CAMEROON

For decades, decisions by Cameroonian courts took a static view of customary law and did little to mitigate its discriminatory operation against women.[60] This was true in Cameroon as the constitution recognised the application of customary law without resolving the conflict between it and human rights provisions. Judges interpreted this situation as permitting the application of provisions of customary law that discriminated against women.[61] Courts failed to take into account the fact that Customary Law is dynamic and ignored the living law that was being practiced by the communities. Customary Law is continually evolving in the light of social, economic, scientific, and technological development and possibilities. The failure to take into account the fact that Customary Law is dynamic has changed in the majority of jurisdictions. Judges are increasingly asserting the supremacy of human rights norms and declaring customary discriminatory norms unconstitutional or invalid and inapplicable in modern society. In Cameroon and several other jurisdictions, courts are responding to the need for change and are showing an understanding of the existing social and economic conditions.

In Nigerian case of *Muojekwu v. Ejikeme*,[62] the Nigerian Court of Appeal examined a custom at issue in the context of several provisions of the constitution. The court considered the *Nrachi* custom of Nnewi that "enable[d] a man to keep one of his daughters unmarried perpetually under his roof to raise issues, more especially males, to succeed him. With the custom performed on a daughter, she takes the position of a man in his father's house.[63]The Court of Appeal held that the custom was discriminatory and therefore inapplicable. It was held to be against the dictates of equality and good conscience, and it was also held to be in violation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[64] It was further held to be inconsistent with public policy and being repugnant to natural justice. Noting the failure of the legislature to outlaw the practice through legislation, the court expressed the view that in such situations it was up to courts to do something about it. The court articulated this brilliant position in the following words:

Since the abrogation of such obnoxious practice rests absolutely with the legislature of the state that still clings to such absurdity and the burden of containing the incidence of its manifestations in judicial matters lies upon the apex court the best that can be done at this level of judicial hierarchy is to shun the practice as repugnant to natural justice, equity and good conscience and, therefore, unenforceable, hoping that sooner than later the authorities that are in a position to do so will hasten the interment of a custom that has outlived its usefulness and has become counter-productive.

Citing an earlier related case[65] the court further held that *"All human beings male and female are born into a free world and are expected to participate freely without any discrimination on grounds of sex, and that is constitutional."*

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[57]Suit No BCA/46/86 (Unreported)

[58]Mbua Alexander Assanga., "The Legal Perspectives of Bride-Price" (ENAM dissertation 1987)

[59] See *Zamcho Florence Lum v. Chibikom Peter Fru,* Supreme Court Judgment No 14/L of 14th December 1993 (Unreported). despite the landmark decision of the Supreme court, women in Mankong and beyond are still regarded as legal minors no matter the level of education.

[60]*Fomara Regina v. Fomara Henry*, Appeal No BCA/11CC/97, the customary court which is closer to the people upheld discriminatory customary practices which were only overturn by the superior court. It goes to demonstrate that such customary practices are still very much alive in must communities.

[61] Ibid

[62] [2000] 5 NWLR 402

[63] Ibid at 406.07

[64]Ibid at 407. Article 5 of CEDAW requires state parties to take appropriate measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women . . . [and] to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children . . ."

[65]*Mojekwu v. Mojekwe*, [1997] 7 NWLR 283

In the case of Cameroon, non–discrimination and gender equality are principles enshrined in the Constitution and in several instruments ratified by the country. Cameroon has also introduced legislation, including the Civil Status Registration Ordinance 1981 (as amended), that contains provisions aimed at specific discriminatory practices. Despite these legislative initiatives, discriminatory customary values are still commonly observed. Due to the failure of legislation to adequately address the situation,[66] the courts have assumed the role of combating discriminatory practices through the adoption of the egalitarian jurisprudence. The role of the courts has been facilitated by the hierarchies established in the legal system: the constitutional hierarchy of human rights over municipal law by virtue of Article 45 of the 1996 Constitution (as amended), and the supremacy of statutory law over customary law by virtue section 27(1) of the SCHCL, 1955. On the strength of these provisions, the courts have rejected the enforcement of customary law when it conflicts with human rights and municipal law. By refusing to enforce customary values that negatively impact women, the courts inadvertently worked towards the emancipation of women.

Widow inheritance and succession rights are concepts which are a manifest of gender discrimination under customary law. One of the consequences attached to the payment of dowry under customary law is that with the death of the husband a widow may be inherited should she fail to refund the dowry paid on her behalf during the solemnisation of her marriage. The High Court decision in *David Tchakokam v. KeouMagdaline*[67]challenges this customary position. According to the facts, the widow's husband was deceased. During his illness, his nephew took care of him. Upon his death, the widow was, through levirate, married to the nephew of her deceased husband. They had several children. A disagreement arose between the parties when the widow realised that her "new husband" was attempting to establish title over the property left behind by her deceased husband. She then obtained letters of administration over those properties and questioned the legality of the levirate marriage. Prompted by these allegations, the deceased's nephew brought and action requesting the court to validate the marriage. He also challenged the widow's claim to her deceased husband's property on grounds that, being an object of inheritance herself under customary law, she was not entitled to inherit property jointly developed by himself and his late uncle, the deceased husband of the widow. He requested the court to grant him title over the properties and to consider their levirate marriage valid.

Justice Vera Ngassa JCA as she then was rejected the requests. She ruled in favour of the widow, gave her title over all the contested properties, and pronounced the levirate marriage invalid. She questioned whether the marriage ever took place in the first place and argued that, even if it did, it was repugnant to natural justice, equity and good conscience and was thus incompatible with Cameroonian law. The judge in delivering the judgment of the court observed:

All in all, I am unable to find that there was ever a customary levirate marriage between the plaintiff and defendant and, even if there were, the law will not give its blessing to a marriage that is not only obnoxious and repugnant to natural justice but obviously against the written law, for not only is it contrary to section 77 of the Civil Status Registration Ordinance but amounts to the crime of forced marriage under section 356 of the Penal Code, being against the defendant's will and without her consent. Section 27 of the SCHCL clearly does not permit this court to enforce a marriage which is liable to be avoided under our law.

Addressing the discriminatory custom under consideration the learned judge in her characteristically calm manner articulated this unimpeachable position rather illuminatingly thus:

Now, any custom which says that a woman, or any other human being for that matter, is 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 . . . Suffice it to say that the plaintiff did not inherit the defendant and the defendant is not an object of inheritance. The very terms in which that question is couched are so objectionable as to make it one of the most unpalatable question a common law court would ever be asked to answer.

Quite apart from this unimpeachable position held by the court, it is argued that there is no clear standard in determining the rules of repugnancy. There is the view that the court has not developed clear standards for the application of the test. One commentator echoed this view as follows:

The courts have not developed any general theory on the basis of which rules of customary law are to be tested. Rather, they have adopted a liberal and flexible approach and have, on an ad hoc manner, invalidated or sanctioned a rule sought to be applied on the basis of their notion of what is fair and just[68]

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[66]The very nature of customary law rests in its acceptance by the people. So long as the people continue to accept the law as binding, no statute can change it. It may be observed that the preamble of the 1996 Constitution as amended has declared that "All persons shall have equal rights and obligation; that ownership shall mean the right guaranteed by law to use, enjoy and dispose of". This clear constitutional provision which was judicially recognised in the landmark Case of *Zamcho Florence Lum v. Chibikom Peter Fru* (Supreme Court Judgment No 14/L of 14th December 1993), where the Supreme Court dealt a death blow on the customary practices embedded on discrimination called patriarchy. The Supreme Court held that any law that says a woman cannot administer, or own property was bad law which is repugnant to natural justice, equity and good conscience. Despite this clear constitutional/ statutory position and all the anti-discriminatory gender laws, which are backed by judicial authorities, the people still engage in discriminatory practices in the application of customary law.

[67]HCK/AE/K.38/97/32/92 Unreported

[68] G. Ezejiofor., "*Sources of Nigerian Law on introduction to Nigerian Law"* (Ife: University of Ife Press, 1980), P. 43

The absence of clear standard has led to the flexibility in the application of customary law, which has in turn generated uncertainty. Since no basic standard exist, the decision is based on the discretion of the court. And since it is but normal that judges hold different values of what might constitute proper conduct there is bound to be judicial uncertainty in the interpretation of the test, thus making it difficult to establish a universally valid precedent accepted to all. As the decision of judges appears to create an uncertainty about the way in which the clause is applied, that uncertainty is passed down to customary law, which in turn made it equally uncertainty is best illustrated through case law analysis. The contracting decision reach in *The Estate of Agboruja*,[69]a Nigerian case is worth discussing. In *The Estate of Agboruja,* the court approved the system of levirate marriage. In upholding the system, the court held:

… the custom by which a man's heir is his next male relative, whether brother, son, uncle or even cousins, is widespread through Nigeria. When the are minor children, it means that the father's heir becomes their new father. This is a real relationship, and the new fathers regard the children as their own children. Whenever this custom prevails, native courts follow it, and no doubt somewhere or in this large country this being done every day.

Approving the custom of levirate, the court observed:

. . . there can be nothing intrinsically unfair or inequitable even in the inheritance of widows, where those who follow the custom are pagans and not Mohammedans or Christians. The custom is based on what might be called the economics of one kind of African system, in which the family is regarded is a composite unit.

Although the *Tchakokam* and *Agboruja* cases are derived from two different jurisdictions, it is important to note that the applicable rules are similar as customary law are homogenous and some practices are common. And more to that Anglophone Cameroon and Nigeria share similar legal tradition.[70] Nonetheless, the judges arrived at different conclusions. Whereas the Nigerian judge saw the practice as not being repugnant because of the benefits it confers to the family, his Cameroonian counterpart disapproved of it as repugnant.

Customary Law also dictates that, in the presence of suitable male heirs, a daughter cannot inherit in the event of intestacy of her 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. Nkwingak Francis Njanga and Keyim – administrator of the Estate of Keyi Peter*[71] the deceased, who was polygamously married, died in 1977. 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 appointed next of kin 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 defendant (administrator of the 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, the fact would not be weighty enough to divest her of her father's estate, 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 issuing new letters of administration to the deceased's daughter on behalf of all the beneficiaries. The court, in delivering the judgment, reiterated the position of statutory law with respect to intestate succession, thus:

The law has made statutory the order of priority of administration of estate . . . From the above statutory provision, the plaintiffs who are the children of the deceased . . . have priority over the first defendant who is the brother of the deceased who comes in the fourth position and the second defendant who comes in no place at all as cousin. The first and second defendants relied on the minute of the family meeting . . . where it was decided that the cousin of the deceased and . . . brother of the deceased were nominated administrators of the estate of the deceased. In that family meeting, the estate was divided to all the members of his African family including his nephews . . . At this modern time when law has made provision on the distribution of intestate succession, it is absurd

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[69] (1949) 19 NLR 38

[70] Article 9 of the British Mandate Agreement on the Cameroons did give Britain the liberty inter alia to: … "constitute the territory into a customs, fiscal and administrative union or federation with the adjacent territories under the sovereignty or control, provided always that the measures adopted to that end do not infringe to the provisions of the mandate". It was on the strength of this provision that Britain fused together the British Cameroons with Nigerian Protectorate for administrative and judicial purposes. By the time the Trusteeship Agreement replaced the Mandate Agreement in 1946, British Cameroons had been divided Northern and Southern Cameroons. However, very little was seen by way of administrative and judicial changes. One of the consequences of the Nigerian Constitution of 1954 was that it gave birth of a High court in the Southern Cameroons. The jurisdiction of this High Court was dictated by another statute, namely, Southern Cameroons High Court Law of 1955. The implication of this merger with Nigeria meant the application of the laws of the Federation of Nigeria. So, until she became independent in 1961, former West Cameroon did apply both English Law and Pre- 1960 Laws of the Federation of Nigeria. See E.N. Ngwafor., Family Law in Anglophone Cameroon: (Canada: The University of Regina Press, 1993) pp. 6-7

[71]Suit No HCF/AD/57/97-98 Unreported

for any person or group of persons to set in a primitive manner and permit people to reap from where they did not sow. Even if such a decision were rooted in the culture of the deceased and the defendant, it is certainly repugnant to natural justice, equity and good conscience. No matter what problem the deceased had with his children that did not and does not deprive them of their right of inheritance particularly as deceased died intestate.

This case reveals the conflict between the human rights value of gender non-discrimination on the one hand and the customary value of patriarchy on the other. The deceased's brother and cousin were granted administration over the deceased estate on the strength of a family meeting and by virtue of the fact that they took care of the deceased during his illness are burial. Although the deceased's children were capable in their own right to administer the estate, they neither demonstrated nor questioned the rationale of appointing their uncle and father's cousin as administrators. The court was swift to identify gender discrimination in the custom under consideration, which denies female children the right to intestate succession. Invoking the repugnancy test, among others, it rejected the enforcement of the custom as being contrary to a written law and therefore unenforceable.

Similarly, in *Noumbissie Nee Wanji Mary v. Nganjui John*[72]which is an appeal against the High Court of Meme Division delivered on 13 day November 1998, the court granted letters of administration to the present respondent (Uncle to the late Noumbissie Albert) at the lower court in the matter listed as *The Estate of Noumbissie Albert Fange* and discountenance the caveat[73] filed by the appellant (wife to the deceased Noumbissie). Dissatisfied with the decision, the appellant, through her counsel, gave notice and grounds of appeal and filed among others the following ground of appeal: that the learned trial judge erred in law when he ordered that letters of administration over the estate of Noumbissie Albert Fange be granted to the uncle when there is a surviving widow (the caveatrix) and the first child of deceased who is now a major.

The brief facts of the case are that Noumbissie Albert Fange (deceased) was involved in a ghastly motor accident at Mutengene and died. He was married to two women: Noumbissie Nee Wanji Mary and Manjie Agnes Nkwako. Both wives at the material time were teachers. Mary lived with the deceased husband in their matrimonial home at Kosala, Kumba. Agnes lived in her own home at Fiango, Kumba. Late Noumbissie had four children with Mary and two with Agnes. Nganjui John the present respondent was the paternal uncle of late Noumbissie Albert. He educated the latter, married him a wife, Mary, and bought a plot of land on which they had their matrimonial home. He also got the money found with the deceased and bought a taxi. The proceeds of the taxi were used to pay the debts of the late man. He was equally responsible for the education of deceased Noumbissie's children.

According to the appellant (deceased wife) she was the one paying her children's school fees and the respondent (uncle to the deceased) was not helping her in any way whatsoever. On this basis the appellant opposed the grant of letters of administration to the respondent. She claimed to be capable of administering the estate on behalf of her children and herself. It was on upon these facts that the court granted the letters of administration to the respondent. It was at the Court of Appeal argued on behalf of the appellant (deceased wife) that the lower court erred at law by not respecting Rule 21(1) of the Non-Contentious Probate Rules, 1954 on the order of priority for grant in case of intestacy. It was said that the rightful person to have been declared administrator of the estate of Noumbissie (deceased) was the appellant, since she was the surviving wife of the late man. It was further argued by the appellant that a distant relative like the respondent could not inherit some one's property as against the person's surviving spouse or children.

It must be noted that the lower court had relied on the next of kin's declaration granted by the customary court to the respondent to grant letters of administration which is the subject matter of the appeal. Next of kin declarations are granted by the customary court as in this case when the applicant show proof that he had been appointed in a family meeting by the family members as the next of kin (in this case a distant male relative was appointed over the deceased wives). It was argued that the next of kin's declaratory judgment granted by the customary court to the respondent ought not to have tied the hands of the High Court to have granted letters to the deceased wife.

In rendering its decision, the Court of Appeal interpreted Rule 21(1) of the Non-Contentious Probate Rule 1954 which lays down the order of priority that the court will follow in granting letters of administration. Under this order the surviving spouse stands first. In the instant case late Noumbissie had two wives. The question which the court was constituted to answer was: should it be the two spouses who should take pride of place and be granted letters of administration jointly? The action was instituted only by one wife, the appellant (the first wife), without considering the existence of the other wife. The evidence from the lower court reveals that the appellant (first wife) claimed she did not know that her late husband had another wife. The court held that it was quite bizarre that the appellant claimed she did not know of the relationship between late Noumbissie and Agnes for all the long period they had been together in Kumba, a relationship that resulted in the birth of a child as far back as 1982. The only inference the court drew from the claim of ignorance of that relationship is that both wives had a very strained relationship. In these circumstances both spouses could not be made joint administrators. In like manner the court held that to grant letters of administration to appellant would be inimical to the other spouse and her two children. Although the court took steps to revoke the letters of administration

[72]Suit No CASWP/2/2000. Reported in (2000) CCLR Part 9 at p.1.

[73]A Caveat is an opposition filed by any interested party to an estate, opposing the grant of letters of administration over the estate which the applicant for grant seeks to administer.

granted to the respondent same was not handed to the wives as co administrators. The court rather asked them to reconcile their differences, if any. The court rather revoked the letter of administration and the same was handed to the administrator General who, by virtue of Section 10 and 15 of the SCHCL 1955 is the President of the High Court of the place where the deceased owned properties.

In *Ndifor George Tala (Administrator of the Estate of Abah Magdalene, Deceased) v. Group EMAC Et Compagnie (represented by Enac Jean)*[74]suit No BA/4M/93-94 was commenced by the Respondent by motion on notice, praying the court to order Abah Magdalene and her agents to deliver up possession of the premises covered by land certificate No 936, the property of the respondent, and to order the tenant occupying the said premises at the time to pay rents to the applicant/respondent. Abah Magdalene was the 10th wives of one Yemtsa Moussa. She was the granddaughter of the Fon of Mendakwe. On their marriage, the Fon allocated a plot of land situated at Mendakwe to Yemtsa Moussa his son-in-law. Yemtsa constructed two houses on the land. Yemtsa died in December 1990. Prior to his death, his wife Magdalene was living in one of the houses. On 16day May 1990, the respondent served on her a notice to quit and to deliver up possession of the premises to them. They are said to have bought the said premises from Yetmsa on 10May 1990.

At the lower court, the presiding magistrate allowed the application and made the following consequential orders:
That the respondent (deceased husband's wife) and her agents should deliver up the premises belonging to applicant but now occupied by respondent. The lower court equally ordered that all arrears of rent be paid to the applicant. The respondent felt aggrieved by the court's findings and consequential orders. She filed two grounds of appeal challenging both the findings and orders flowing therefrom. However, before the appeal came up for hearing, the appellant died. She was then represented in this appeal by Ndifor George Tala, the administrator of her estate. The first ground of appeal questioned whether Abah Magdalene was a tenant to the respondent. She occupied the house as the wife of Yemtsa Moussa. She paid no rent to him. The land on which the two-apartment house was built was given to her husband by her grandfather in consideration for her marriage to Yemtsa. As a wife, she has an equitable interest in the house. The husband sold the house over her head in which she was never a tenant to be served with a notice to quit.

A further question posed by the Court of Appeal was: can the husband, if he were alive, successfully obtain possession by the issue of a writ of possession? Can the purchaser in this case (the respondent) obtain possession by the issue of such a writ? It was held by the court that the wife has an interest in the house allegedly sold by the husband. The court of appeal refused to uphold a traditional principle that the husband has full authority and control of the matrimonial home. In the words of the court, it was stated while invoking Common Law Principles and the principle of equality that the husband has no right to turn the wife out of the house. More to that it was the house provided in consideration of the wife getting married to Yemtsa. She has an equitable interest in the property.[75] The purchasers of the said premises were ordered to claim the purchase price of the property from the administrator of the estate of late Yemtsa Moussa.

The discriminatory aspect of Customary Law was expressed in *Fomara Regina Akwa v. Fomara Henryy Nche.*[76]This appeal is against the judgment of the Mankon Customary Court in Civil Suit No 75/95-96 delivered on 21 October 1996. Here, the respondent brought a petition for divorce against the appellant. After a vain attempt to reconcile the parties, a full trial was conducted. At the end of the trial, the parties divorced with the respondent being granted custody of all the children. The appellant was however allowed to have access to them. The respondent was ordered to give the appellant 56.000 FCFA to start a new life.

The facts on which the court based its judgment are that the parties married on 26May 1966. They opted for polygamy. Things got sour in 1991 when the respondent's brother is said to have been keeping the parties together died. The respondent alleged that, prior to 1991, he transferred the sum of 1.420.000 FCFA into the appellant's account. He later opened an off-licence bar for

[74]Appeal No BCA/28/2000: Reported in CCLR Part 9 at P.26

[75]That right cannot be overreached by any legal right even though legal rights bind the world. See the case of *William & Glyn's Bank Ltd v. Boland [1981] AC 487*. Facts: The appeal concerned two consolidated cases. In a matrimonial home, each wife contributed to home's purchase monies and mortgage instalments, rendering each tenant in common in equity to the extent of their financial contribution. Both homes were conveyed in the legal names of their husbands. Each husband legally mortgaged the homes to the bank. When they defaulted, the bank started proceedings for possession of the homes. The wives were in continuing occupation of the home. Issues: The question arose as to whether the beneficial interest of a wife in actual occupation of the property is capable of taking an overriding interest under the Land Registration Act 1925 over the effect of a legal and registered mortgage. Held: The House of Lords held that the beneficial interest of a spouse in actual occupation of property legally owned by another spouse possesses an overriding interest in the property, that takes priority over a legal charge. Firstly, on the facts, the court held that each wife is treated as a person in actual occupation, as a spouse physically living in the house, affording her protection accordingly. Secondly, the court held that the Land Registration Act 1925 recognises the rights of occupiers, in light of widespread developments in shared ownership, and that the equitable interests of a spouse in actual occupation of a matrimonial home under a trust for sale are capable of being recognised as overriding interest protected by section 70(1) (g) of the Act, overriding that of a legal charge by a legal owner. The court noted that, in lieu of the way that the Act confers protection to occupants, banks ought to make more careful enquiries into occupation. Accordingly, the court held that the wives' interest overrode the bank's legal charge.

[76]Appeal No BCA/11C/97: Reported in CCLR Part 9 at P. 32

310.000 FCFA ran by the applicant. According to the respondent, he noticed a change in the attitude of the appellant after the investment. He alleged that the appellant no longer took care of him when he was on diet. The respondent accused the appellant of taking her lover to his brother's compound where the bar was located, after his brother's death. Furthermore, the appellant refused him sexual intercourse. Because of the allegations the Respondent withdrew the off-licence bar from the appellant and gave it to their eldest son.

The appellant on her part averred that she married the respondent when he had nothing and both of them started with a one-room house where they had three children. They had nine children in total. According to the appellant she invested a lot in the respondent. Despite the revelations of the appellant at the lower court and taking into consideration the fact that the parties got married when they had nothing and had lived together for over thirty years during which they amassed wealth, the customary court gave judgment for the respondent (the husband) and ordered that the sum of 56 000 FCFA be given to the appellant to start a new life.

Dissatisfied with the decision of the lower court, the appellant filed notice and grounds of appeal among others that the court erred in awarding 56 000 FCFA which the appellant considered to be grossly insufficient. The appellant counsel postulated that that the trial court failed to take into consideration the duration of the marriage, which is 30 years, in awarding 56.000 francs for the appellant (the divorced wife) to start a new life. Counsel for the appellant urged the Court of Appeal to make an award of 5.000.000 FCFA in favour of the appellant. This submission was made without taking into consideration that the material jurisdiction of the Customary Court is 69.200 FCFA. It was submitted on behalf of the respondent (the husband) that the appellant (the wife) cannot inherit properties as she herself was considered property under customary law. The court rejected this argument and held that it was repugnant to natural justice, equity and good conscience and was against public policy. The court cited Article 1 of the Universal Declaration of Human Rights 1948, that states: "All human beings are born free and equal in dignity and rights. They are endowed with reasons and conscience and should act towards one another in a spirit of brotherhood." The court relied on the Universal Declaration of Human Rights to condemn discrimination on the basis of race, colour, sex, language, religion etc.

In addressing the award made to the appellant by the lower court, the Court of Appeal observed that, there is no doubt that the jurisdiction of customary court ends at 69.200 FCFA and that the court had the discretion to choose the amount to award. The fact that the appellant received the sum of 56 000 FCFA from the court is not a bar to asking for more from a court with higher jurisdiction. The court went further to observe that it cannot be said that the appellant (the wife) contributed nothing to the home. If she was not enterprising, the respondent would not have opened an off-licence bar for her to run. The only problem they had with the business is that the respondent accused the appellant of adultery. This meant that if the appellant was given the opportunity she would have done more. It is evident that both parties started with just a single room wherein they had three children. The appellant sacrificed a lot for the family to grow. Nowhere was it said that the couple had house helpers. She bore children and raised them; her unreserved services for 30 years cannot be ignored. The award of the trial court though small was not out of place. Her youth having been sapped, it is but natural and just that financial provision be made in favour of her. Based on the above facts, the court varied the award of 56.000 FCFA made by the lower court in favour of the appellant to 100.000 FCFA.

Although this decision, in the view of this author, is sound in principle as it upholds the principle of equality as enshrined in international instruments to which Cameroon is a signatory, the decision is also left wanting as it exposes the weaknesses of the court to adjudicate on issues touching on Customary Law. The article notes that it is settled law that jurisdiction is the life blood of any adjudication, without which no proceeding, however brilliantly conducted by the court, can be valid. It is really a threshold matter or sometimes referred to as the periphery matter to be dealt with once raised or challenged in any proceeding. Without jurisdiction, the whole trial or proceeding of the court is a nullity however well conducted, reason why the Customary Court in the above case could not award claims above its material jurisdiction. Quite apart from that, it is disturbing why after the admission by the Court of Appeal that one cannot be barred to ask for more from a court with higher jurisdiction, the court still went ahead to award 100.000 FCFA (34.000 FCFA above what was awarded by the Customary Court). This, in the view of this article, is a barrier to access to Customary Court for redress. The non-improvement of the material competence of the Customary Court is a source of anxiety for making it difficult to enforce patent rights violation among local people.

Apart from prohibiting women from inheriting in the estate of their deceased father, customary law also prohibits widows from exercising the right to own and inherit property on the death of their husband, a position that was successfully challenged in *Elive Njie Francis v. Hannah Effeti Manah*,[77] The deceased died in 1997 and was succeeded by his wife and eight children. The deceased's nephew alleged that on the death of the deceased (his uncle), he bought sackcloth for the widow and this act, according to custom, made him the next of kin to the deceased and the widow his property. He also alleged that that the family of the deceased had, in a family meeting, appointed him next of kin to the estate. On the strength on the custom and the family meeting, the deceased's nephew filed an application requesting the Bwenga Customary Court, sitting in Mutengene, to declare him next-of-kin to the deceased's estate. Before his application was received, the widow has earlier filed a separate application also requesting to be declared next-of-kin to the estate. The court consolidated and heard both applications together.

[77]HCK/AK/K.38/97/92, 1999

The court dismissed the deceased's nephew's application and declared the widow next-of-kin to her deceased husband's estate on behalf of her children. Aggrieved by the decision, the deceased's nephew appealed to the Southwest Court of Appeal. The Court of Appeal dismissed the appeal and upheld the decision of the lower court in declaring the widow next-of-kin of her deceased husband's estate. It stated that, by virtue of the law that spells out the priority of inheritance[78]in matters of succession, the widow and the children are rank higher in the scale when considering who will succeed the deceased. With respect to the nephew's contention that he was entitled to be next of kin by virtue of native law and custom, the Court disagreed and stated that:

Even if it is the … custom that by buying the sackcloth for the widow of the deceased, the provider is deemed next-of-kin, that custom cannot be enforced by this court. It is repugnant to natural justice, equity and good conscience.

The issue for determination before the court was whether a custom and the verdict of a family meeting were sufficient to bestow administration over a deceased's estate on his nephew, against his widow and children. This case reveals patriarchal customary value, which sees women as minors and unfit to inherit property, in conflict with the value of gender equality. Alternatively, its decision was influenced by the welfare of the children of the deceased, the case is one of some peculiar cases where a customary court rejected the enforcement of a custom, which is notorious, and which, unfortunately, is generally observed in many parts of Cameroon. Unfortunately, the customary court did not provide a clear rationale for its decision. It can be surmised that the court's decision reveals that, even within an institution as conservative as the Customary Court, liberal voices are gradually gaining acceptance.

Unsurprisingly, the decision of the Bwenga Customary Court was then endorsed by the Court of Appeal. The Court of appeal invoked the repugnancy test to reject the custom. It saw the issue as it was: a patriarchal customary value aimed at subjecting the status of women. Consequently, the justifications advanced by the deceased's nephew were not weighty enough to warrant him being appointed next of kin. Under these circumstances, the courts' decision represents a rejection of the patriarchal norm of customary law and a victory for the values of gender equality and non-discrimination.

The cases discussed above demonstrate the extent to which the superior courts are using the repugnancy test as a measure to eradicate discriminatory customary values. Although the cases make little or no reference to human rights, nonetheless both the facts and the circumstances reveal the saliency of human rights issues in this context. Although no express reference was made to human rights, the superior courts have at least inadvertently established a link between their interpretation of the repugnancy test and human rights. To justify the rejection of discriminatory customary values that impact the status of women, the Courts most often make reference to the repugnancy test. In fact, the repugnancy test is seen as a widow of opportunity to implicitly introduce human rights thinking into the jurisprudence of the court.

CONCLUSION

Bride price has bound the woman to customary practices in such a way that not even the written law can seem to liberate her from it. Even our Law Lords with the law supposedly at the breast are bound by and surrender to senseless customs. The conflict between custom and the law ought not to exist because in principle, whenever custom differs from the law, then the written law ought to prevail.[79] The power of custom however is the fact that it has been handed down by our ancestors and there is a lot of ancestral worship and reverence in Cameroon. The sting of tradition lies in the fear of ill-luck if the ancestors are disobeyed, or outright witchcraft.

The test of every tradition should nevertheless still be whether it passes the test of reasonableness, equity and good conscience (provided our consciences are not custom bound). In so determining whether a custom is reasonable, it is argued that the people to whom the custom is to apply must participate in the desired process calling for a change of the custom. Without that, the change will of course be a case law decision which may not be binding on the people.

[78]Section 21 Rule 22 of the Non-Contentious Probate Rules fixing the order of priority for grant in case of intestacy:(1) "… the person or persons having a beneficial interest in the estate shall be entitled to a grant of administration in the following classes in order of priority namely;-) The surviving husband or wife; the children of the deceased and the issues of any deceased child who died before the deceased; the father and mother of the deceased; brothers and sisters of the whole blood and the issues of any deceased brother or sister of the whole blood who died before the deceased; brothers and sisters of the half blood and the issue of any deceased brother or sister of the half-blood who died before his deceased; grandparents; uncles and aunts of the whole blood and the issue of any deceased uncle or aunt of the whole blood who died before the deceased; uncles and aunts of the half blood and the issue of any deceased uncle or aunt of the half-blood who died before the deceased

[79]Section 27(3) of the Southern Cameroon High Court Law (SCHCL) 1955 lays down that: No party shall be entitled to claim the benefit of any native law or custom if it shall appear either from express contract or from the nature of the transactions out of which any suit or question may have arisen that such party agreed that his obligation in connection with such transactions should be regulated exclusively by English Law or that such transactions are transactions unknown to native law and custom

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