**Hope for Children International**

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**CHILD MARRIAGE AND LEGAL FRAMEWORKS IN CAMEROON:**

**THE LEGAL INSTRUMENTS AND GAPS IN JUSTICE RESPONSE TO THE RIGHTS OF THE GIRL CHILD**

***REPORT***

**INTRODUCTION**

Traditional gender roles in Africa limit men’s involvement in home chores and raising children. On the other hand, when it comes to decision-making regardless of the issue, men take the upper hand. Property rights and inheritance practices further promote men’s standing in society while perpetuating poverty and powerlessness among women. Arguably, this state of affairs has flourished in Africa and Cameroon for a long time now because of some customary practices that get reinforced directly or inadvertently by social institutions like the communities, and even judicial institutions. Female marginalization/inequality has been the focus of many studies and issues relating to child marriage have been on the headlines of many international and national discussions and workshops.

Despite the fact that Cameroon like other countries is a signatory to many international treaties such as: the African Charter on the Rights and Welfare of the Child, United Nations Convention on the Rights of the Child, the Universal Declaration of Human Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention against Torture and Inhumane Treatment, and more. It is yet to faithfully abide by the dictates of these conventions. These treaties and conventions emerged in earnest after

the United Nations Charter made it clear that fostering human rights was of prime importance to the organization. Its Article 56 especially requires the promotion of human rights by member states. Article 19 of the United Nations Convention on the Right of the Child bans any type of maltreatment or exploitation of children, child marriage being one of such maltreatments.

The peculiar colonial history of Cameroon introduced a plurality of laws, primarily, English Common Law, and French Civil Law.Customary laws that were in place prior to the reception of foreign laws are still in place, and occasionally conflict with received laws.

Child marriage therefore is one of those issues which clearly violates a girl’s human rights and it is viewed as a discriminatory practice between boys and girls. Child marriage has been defined as any formal or informal union where one or both parties are under the age of 18 years. This union usually has so many adverse effects especially on the girl such as pregnancy risks, increased risks of contracting HIV and STIs, infant mortality, continuous intergenerational poverty, barrier to education and increased risks of being subjected to domestic violence as well as many others. The Civil Status Registration Ordinance of 1981 in its art. 52(1) states that “no marriage may be celebrated if the girl is below the age of 15 years and the boy is below the age of 18 years except under the exemption granted by the President of the Republic for serious reasons”. This article therefore sets the ball rolling on improving Cameroon’s penal and socio- cultural response to child marriage.

This paper is premised on examining laws that affect child marriage. The paper argues that while progress is being made at some levels, the status quo, which is child bride, is still entrenched in other facets. The rationale for focusing in this paper on laws that are in place to advance the girl child’s interests is because law controls how social programs are extended to citizens, and in this case to the girl child. Three main questions guide the paper:

* First, what laws have been put in place in the country to address issues related to child marriage?
* Second, do the laws adequately address child bride issues?
* Third, what can be done to create an egalitarian society for the girl child and women folk as a whole?

**LAWS THAT HAVE BEEN PUT IN PLACE TO PROTECT THE CHILD AGAINST CHILD MARRIAGE.**

The June 1981 Civil Status Registration Ordinance, has legislation that advances women’s courses and individuality. Notably are Articles 52(4), 61(2), 74(1), 75(1), 76(1), and 77(2).

Article 52(4) recognizes a woman’s right to consent freely and firmly to a marriage. This consent cannot be vitiated rendering therefore the marriage void, in the case of the use of force.

Article 61(2) addresses issues relating to dowry and how marriages should not be stalled based on non-payment of or other issues relating to dowry. The article expressly states: “any objection based on the existence, payments or terms of payment of customary dowry, even if agreed to in advance shall be inadmissible and against public policy.” Therefore, payment of dowry should not be a condition sine qua non to the establishment of a marriage but with child marriage, the contrary is true. Most of the girls who are victims of child marriages is as a result of poverty and since the parents need money they will do all it takes to sell the child into an early marriage.

Article 74(1) gives a woman the right to shape her own pathway in life. It states “a woman may exercise a trade different from that of her husband;” This means that even in the situation where the child is forced into an early marriage, she has the right to choose whatever path in life that she desires; either going back to school, learning a trade, or anything she wants to do.

Article 75(1) further extends this right by stating “where a woman exercises a trade separate from that of her husband, she may open a separate account in her own name and make deposits or withdrawals as she sees fit.”

Article 76(1) accords a woman right to alimony and child support. It states “a woman who has been deserted by her husband may obtain alimony for both the children left under her care and herself.” In a situation where this child bride is abandoned by the husband, she has the right to sue for alimony and child support.

Article 77(2) further gives a woman rights to inheritance of her husband’s property, as well as the option to remarry upon death of her husband or stay celibate. The article more specifically states “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....” Further, the 1925 Administration of Estates Act, section 46(1) upholds the rights of a surviving spouse as the immediate beneficiary should a spouse die intestate.

Finally, Art 356 of the penal code punishes anyone who forces a minor under the age of 18 years into a marriage with imprisonment of from 5-10 years and with a fine of from 25.000-1.000.000 FCFA.

The above provisions of the Law therefore go a long way to show that the issue of child bride is not being neglected. Yet how far these laws have addressed the issue of child bride in Cameroon is another question we have to answer.

**GAPS IN JUSTICE RESPONSE TO THE RIGHTS OF THE WOMAN AND THE GIRL CHILD.**

To contend that no progress has been made in addressing the place of a girl child in society will be insincere. However, this paper argues that many of the

measures to lift the girl’s place in society are un-satisfactory, and at times contradictory. Even developed countries like the United States cannot boast of an egalitarian society where things are always same for both gender. Clearly, disparities exist; but what is relevant is the level of commitment to decrease disparity. Cameroon, as explained above is a signatory to many United Nations treaties and conventions that advance equality and humane treatment for all. However, sometimes, Cameroonian statutes are silent about specifics. Article 5 of the Universal Declaration of Human Rights for instance addresses the right of all against torture, cruelty, or any type of inhumane treatment. However, it is sad to note that the much-needed laws against child marriage are hopelessly lacking in Cameroon.Violence against women and girls is highly prevalent, in particular within the family, and remains widely socially accepted. Marital rape is not a criminal offense. The government has not established shelters or legal aid clinics and victims generally suffering from a culture of silence and impunity. The absence of specific laws that regulate such domestic violence however does not mean that people are given the green light to aggress others. The Cameroon Penal Code covers such abuses.

Even though section 61(2) of the Civil Status Registration Ordinance prohibits the payment of dowry as a condition necessary for a valid marriage, curiously, formal law courts revert to customs on the issue of dowry. A none payment of dowry led the Buea Court of Appeal in the South West Region 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 premise that the non-payment of dowry by the man invalidated the marriage—

Section 77(1) of the Civil Status Registration Ordinance states: “In the event of the death of one of the spouses or of a legally pronounced divorce, the marriage shall be dissolved.” The problem is that following customary law, once bride price is paid the woman in essence becomes “property” of the man regardless of whether the marriage was formalized in court. As a consequence, even if the marriage is ultimately dissolved informally through abandonment, or formally through a legal divorce, the woman remains the man’s property if she does not refund the dowry. Even if the woman were to remarry, the husband to whom she owes a refund of the dowry has possessory rights of the woman’s corpse (upon her death) over a current husband.

The woman’s plight is further worsened should the husband die. Even though section 77(2) absolves a woman from any obligations of a marriage upon the husband’s death, women are subjected to inhumane customary rituals that constitute molestation and torture, and such cruelty could persist for a whole year. These practices persist in part because the women themselves do not pursue legal channels to stop them.

With regard to the choice of marriage, couples may choose a polygamous or monogamous form of marriage since Article 49 of the Civil Status Registration Ordinance of 1981 recognizes polygamy. However, by and large, even when a woman’s stipulated preference was monogamy, courts circumvent this choice at litigation in the English-speaking part of Cameroon because a series of decisions have come out of the High Courts and Courts of Appeal to the effect that “Monogamy according to native laws and customs” is polygamy, as our native laws and customs know no notion of monogamy”

Article 74(1) of the 1981 Civil Status Registration Ordinance grants a woman liberty to engage in any profession of her choice, yet section 74(2) gives a man

right “to object to the exercise of such a trade in the interest of the marriage and children.” How this is not constraining, contradictory, and unconscionable is puzzling. Women have the legal right to own land and trees, but in practice, men control nearly all property.” The husband has the right to administer communal marital property, thereby giving him the right to sell or mortgage the couple’s property without his wife’s consent.” In essence, while the economic circumstances of men have been for the most part robust, social conditions have been stagnant or painfully slowly getting better for women in many blighted areas. These practices have far- reaching implications for women trapped in this web of subjugation. The UN Human Rights Committee (2012, paragraph 8) reports: Notwithstanding the prohibition of discrimination enshrined in the Constitution of Cameroon, the committee is concerned that women are discriminated against under articles 1421 and 1428 of the Civil Code concerning the right of spouses to administer communal property, article 229 of the Civil Code regulating divorce.

The Penal code in its art. 357(1) on the abuse in respect of bride price states that “whoever receives from a third party the whole or any part of a bride price for the promise in marriage of a woman already married or bound by betrothal not yet broken off shall be punished……….” This is an indication that our legal system still supports olden days customs of arranged marriages without the consent of the parties and if such a case should be taken to the courts, the victims have no say in defending their course.

**WAY FORWARD ON IMPROVING THE LEGAL RESPONSES TO CHILD MARRIAGE IN CAMEROON**

Law is a vital means of refining culture especially since it modifies behavior. Consequently, to address many of the issues discussed above, there must first be enacted laws. This area of the law is still very nude as the legislator has not made any specific legal document to govern child marriage and child bride.

It is quiet unfortunate that Cameroon is a signatory to many international conventions and it is clearly stipulated int art. 45 of the constitution that any convention ratified becomes superior to national laws yet, local laws still prevails

The Maputo Protocol states that all states have a draft law on Child Protection and Cameroon is yet to respect that. The Women’s Rights Protocol sets forth a broad range of economic and social rights, including rights to equal pay for equal work and to adequate and paid maternity leave in both the public and private sectors. It endorses affirmative action to promote the equal participation of women at all levels of decision-making and calls for equal participation of women in law enforcement and the judiciary. It recognizes the right of women to participate in the promotion and maintenance of peace. The Women’s Rights Protocol further provides important protections for adolescent girls, as well as for particularly vulnerable groups of women, including widows, elderly women, disabled women, poor women, women from marginalized population groups, and many. Cameroon has ratified this Protocol though with reservations and as such many of its requirements have not been met by the government of Cameroon. Measures should be taken so that this protocol is fully respected.

The draft children and Family code is still being deliberated upon since 2004. This draft Family Code is so rich with provisions that protect the rights of the woman and the girl child.

The government should also identify child protection officers and come out with their responsibilities. Experience has proven that the Police is not really the friend to victims of child abuse and as such many of the victim shy away from the police and prefer to stay with their problems. Thus, Child Protection Officers to be the chief implementers of women and girl’s rights in Cameroon.

There should be a legislation implementing a uniform age for marriage between boys and girls. One should not be placed at 18 years and the other at 15 years. Therefore, all marriages before 18 should be void ab intio.

Compulsory registration of all marriages should be introduced and ensured in all civil status registries for follow up of the ages and subsequent protection of the woman.

It is true that the Ministry of Women’s Empowerment has opened call centers for women who are victims of domestic violence but these centers are located mostly in urban areas meanwhile most of such barbaric acts occur in the rural areas and the victims are left to their fate.

**HOCI Cameroon**

**2016**