

# The Rights of Women in Marriage and Family Relations

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**Abstract:** - As far as the rights of women in marriage and family relations are concern, it can be contended that Cameroon has undoubtedly achieved so much. Cameroon has adopted appropriate legislative and institutional measures to guarantee women equal opportunities in marriage and family relations. In spite of the achievements, discrimination against women continues to linger in rural areas. In this respect, the article argues that more is desired to attain relative equality between men and women. To attain relative equality, the article settles for a reform of existing discriminatory laws and practices that have hindered the realisation of equal treatment between men and women. Again, the article recommends for the codification of all laws in force relating to marriage and family life. It stands to reason that many women will continue to wallow in ignorance and trapped in abusive relationships, if their rights are not re-asserted. The article finds it necessary to re-assert the rights of women in marriage and family relations by exploring the legislative and institutional measures with the aim of presenting a chronicle of the existing discriminatory laws and practices that have hindered the realisation of equal treatment between men and women.

**Keywords:** Rights, Women, Marriage, Family, life

## I. INTRODUCTION

Women hold multiple identities and in these contexts, assume different roles and responsibilities as daughters, wives and mothers.<sup>1</sup> In spite of the roles women play in the society<sup>2</sup> and their contributions in families, discrimination against women continues to linger in rural areas. In recognition of the discriminations against women, international and regional legal instruments have call on countries to set up standards of equal treatment between sexes.<sup>3</sup> On the strength of articles, 2,9,15, and 16 (1) of the

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),<sup>4</sup> and articles 6, 7 and 21 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol),<sup>5</sup> Cameroon has adopted appropriate legislative<sup>6</sup> and institutional measures<sup>7</sup> to guarantee women equal opportunities in marriage and family relations.

In spite of the achievements, discrimination against women continues to linger in rural areas. In this respect, the article argues that more is desired to attain relative equality between men and women and in so doing, the article settles for a reform of existing discriminatory laws and practices that have hindered the realisation of equal treatment between men and women. Again, the article recommends for the codification of all laws in force relating to marriage and family life. It stands to reason that many women will continue to wallow in ignorance and trapped in abusive relationships, if their rights are not re-asserted. The article finds it necessary to re-assert the rights of women in marriage and family relations by exploring the legislative and institutional measures with the aim of presenting a chronicle of the existing discriminatory laws and practices that have hindered the realisation of equal treatment between men and women.

## II. LEGISLATIVE AND INSTITUTIONAL MEASURES TO GUARANTEE WOMEN EQUAL OPPORTUNITIES IN MARRIAGE AND FAMILY RELATIONS

### 2.1 Legislative measures

To get off to a flying start, it is necessary to re-cant that Cameroon operates a bi-jural system: common law applicable in English-Speaking regions and the civil law system applicable in the French-Speaking regions of the country. The bi-jural nature of Cameroon accounts for the application of diverse laws in this area of the law. Afore 1968, the Nigerian

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<sup>1</sup> The United Nations (UN) Entity for Gender Equality and the Empowerment of women (UN Women), the UN Development Programs (UNDP) and the UNs office on Drugs and Crime and the Office of the UN High Commissioner for Human Rights (OHCHR) "Marriage, Family and Property Rights" UN 2018, 11.

<sup>2</sup> The Preamble of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), 11 July 2003 recognised the crucial role of women in the preservation of African values.

<sup>3</sup> The international and regional instruments include but not limited to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 18 December 1979, A/RES/34/180; Universal Declaration of Human Rights, 10 December 1948; Protocol to the African Charter on Human

and People's Rights on the Rights of Women in Africa (Maputo protocol), 11 July 2003.

<sup>4</sup> CEDAW, 18 December 1979, A/RES/34/180

<sup>5</sup> Maputo Protocol, 11 July 2003

<sup>6</sup> Constitutional Law No 06 of 18 January 1996 to amend the Constitution of 2 June 1972; Law No.2011/011 of 6<sup>th</sup> May 2011 to amend and complete certain provisions of Ordinance No.81/02/ of 29<sup>th</sup> June 1981 on the Organisation of Civil Status Registration and Various Provisions relating to the Status of Physical Persons and the New Penal Code law No.2016/007 of 12 July 2006.

<sup>7</sup> The Customary and high courts; see sections 3 and 18 (1) of law No. 2006/015 of 29<sup>th</sup> December 2006 as amended and supplemented by law No. 2011/027 of 14<sup>th</sup> December 2011 on the Judicial Organisation.

Ordinance of 1981 was applicable in former west Cameroon while the 1966 law together with the French Civil Code were applicable in former East Cameroon. Law No. 68/LF/2 of 11 June 1968 organizing civil status registration is parliament's first attempt to provide a uniform law on family law matters such as death and birth registration, marriage and formalities of marriage with no reference to capacity to marry. This lacuna is cemented by the 1981 Ordinance No.81-82 of 29<sup>th</sup> June 1981 which repealed and consolidated the provisions of the 1968 Ordinance. The 1981 Ordinance is amended and completed by Law No. 2011/011 of 6<sup>th</sup> May 2011.

The Civil Status Registration Ordinance (CSRO) of 1981 intended to apply throughout the country is only applicable in the Anglophone regions of the country. Given the supremacy of the French Civil Code, the common law jurisdictions are expected to apply the French Civil Code. In spite of this, courts in Anglophone Cameroon continue to apply the common law principles in respect to property rights because of the incomplete nature of the Ordinance. This creates diversity of laws in matters relating to marriage and the family. Marriage and family are bedfellows, in that; they are closely connected. In short, there would be no family without marriage, and no marriage without an agreement between two persons to form a family. Marriage is the desire of every woman and when a woman gets married, she enjoys a bundle of rights, commonly called consortium. Lord Reid in *Best v Samuel*<sup>8</sup> defined consortium as a "bundle of rights some hardly capable of precise definition". These rights include but not limited to the sharing of a common home, to keep each other company, enjoy sexual intercourse and to demonstrate love and affection towards each other.

The rights of a woman in marriage and family relations are essentially regulated by laws: statutory and customary laws. While acknowledging the dividing lines between statutory and customary laws, they are both sources of law in Cameroon, binding and applicable by the courts. By statutory law, we mean laws emanating both from the legislative (parliamentary power – *le pouvoir legislative*)<sup>9</sup> and executive arms of government (*le pouvoir reglementaire*)<sup>10</sup> as well as duly ratified international treaties.<sup>11</sup> The government has ratified international treaties and enacted local laws for the respect, protection and promotion of the rights of women in marriage and family.<sup>12</sup> Customary law on the other hand, refers to the

customs and traditions of people of a particular community. At present, Cameroon is home to over 240 ethnic groups. The country's diversity in terrain and cultures has led to Cameroon being referred to as "Africa in miniature" or All Africa in one economy".<sup>13</sup>

The Customary Court Ordinance Cap 142 of 1948 applicable in Anglophone defines customary law as "the native law and custom prevailing in the area of the jurisdiction of the court so far as it is repugnant to natural justice, equity and good conscience, nor incompatible either directly or by natural implication with written law for the time being in force".<sup>14</sup> Section 27 (1) of the Southern Cameroon's High Court Law (SCHCL), 1995 gives legal backings to the continuous application of customary rules in Cameroon. By the above-mentioned section, only customs which are reasonable, not incompatible with any law or public policy; not repugnant to natural justice, equity and good conscience are accepted and applied by our modern courts.

Courts will continue to enforce customary rules as long as they comply with the conditions adumbrated above. The case of *Immaculate Vefonge v Samuel Yonga Yukpe*<sup>15</sup> is helpful in this respect. In this case, the South west court of Appeal enforced a custom forbidding the sending away of a nursing mother from the matrimonial home. This dictum is reinforced by section 358 of the Penal Code. Section 358 punishes with imprisonment from three months to one year and with a fine from 50,000 FRS to 500,000 FRS a spouse who without valid reasons evicts the other from the matrimonial home. In the case of *Chief of Bessongabang v Agbor Neba & Lucas Ndip*,<sup>16</sup> the Bayang customary court (CC) enforced the custom of the mamfe people. According to the facts of the case, the chief of Bessongabang brought an action against two of his subjects for non-performance of a traditional rite called "etak", which is performed during a death celebration by two elderly male persons. Before the court, the defendants conceded to have performed the rite without the chief's connivance. The Bayanga CC entered judgment in favour of the chief and advised the defendants of their roles under customs. The court equally called on the parties to reconcile so as to enhance unity, love and development in Bessongabang in particular and mamfe as a whole.<sup>17</sup>

## 2.2 Institutional measures

Aside the legislative measures, the government has taken institutional measures such as the creation of courts for the enforcement of women's claims in marriage and family relations: customary law courts (CCs) and High Courts (HCs). The dividing line between CCs and HCs is that the latter has

<sup>8</sup> 2 All ER 401.

<sup>9</sup> art 26 of the constitution

<sup>10</sup> Art 27 of the constitution. The legislative power to legislate is complimented by the governmental power to issue regulations in implementation of such legislation. The president of the republic (Art. 8 (5)), the Prime Minister (Art. 12(3)) and a host of government officials share this general power.

<sup>11</sup> In the wordings of arts 43 and 44 of the constitution, the president and parliament have capacity to negotiate and ratify international treaties and agreements. Once an international treaty has been negotiated and ratified in accordance with the constitution, it becomes binding and overrides national law. Meaning, in the event of conflict, international law will prevail over national law.

<sup>12</sup> See fn 3 and 6 above.

<sup>13</sup> See Cameroon-Embassy-JP.Org.

<sup>14</sup> Baabo F "Cameroon legal system" available at <http://www.hg.org>; accessed 10 August 2019.

<sup>15</sup> Appeal No.CASWP/CC/21/81 (unreported).

<sup>16</sup> Mamfe CC Suit No.MCC/41/98/ (unreported).

<sup>17</sup> Kiye E "Conflict between customary law and human rights in Cameroon: the role of the courts in fostering an equitable gender society" African Study Monographs, 36 (2) 79, June 2005

no jurisdiction over customary law matters. In *Ayuk Etang Elias Bechgem v Manyi Agbor serah and Agbor Simon*,<sup>18</sup> it was held that the Kumba CC had jurisdiction to hear a case based on the refund of dowry. In fact, the HC has no jurisdiction over customary law matters. This explains why in the case of *kemgwe v kemgwe*,<sup>19</sup> the HC of Bamenda struck out a divorce petition with respect to customary law marriage, for want of jurisdiction. In this case, Njamsi J declared that:

I have found from the papers filed by the petitioner, particularly the marriage certificate ... that the marriage for which the divorce proceedings are being sought, was a marriage contracted under native law and customs... a marriage contracted under native law and custom can only be divorced by the customary court having jurisdiction over the native law under which the marriage was contracted irrespective of the venue of the marriage .....

Again in the same court, Ndoping J in the case of *Ngwa v Ngwa*<sup>20</sup> held that “since the party had been married according to the Bafut Customary law, the HC could not entertain the petition for divorce”. Another case in point is *Tufon v Tufon*.<sup>21</sup> According to the facts of the case, parties were married according to the native law and customs of the kom people but the marriage certificate bore monogamy as the type of marriage chosen. The hard question was whether the HC has jurisdiction to hear the petition for divorce and the court held in the negative to the effect that [the HC has no jurisdiction over customary law matters]. This dictum was reinforced in *Kumbongsi v Kumbongsi*.<sup>22</sup> In this case, parties were married in 1960 according to the native laws and customs of the Bali-Nyonga people. In 1970, he took the second wife for the purpose of receiving family allowances. He declared the marriage before the court of first instance and a marriage certificate was issued and he noticed there was an entry which read “monogamy with common property”. An appeal was made for rectification whereby Ekema J ordered that the document be rectified. The matter was settled to the effect that once parties are married according to customary law, the marriage is polygamous.

After having dekked at the legislative and institutional measures, it is now necessary to explore the different rights of women enjoy during coverture.

### III. RIGHTS AND OBLIGATIONS OF WOMEN IN MARRIAGE AND FAMILY RELATIONS

In order to strengthen families within marriage, men are considered the head of the family. In this role, he makes decisions concerning all aspects of family and marriage life as

well as the control of family property (Patriarchal family). However, legislative enactments have achieved equality between spouses in relation to decision-making, bringing-up children, divorce, inheritance, financial and matrimonial matters giving husband and wife equal powers of disposition and management of matrimonial property.<sup>23</sup> In spite of the position of the law, the man in our African society remains the head and assumes his responsibility as the head of the family with some reservations.

#### 3.1 Rights of women

This section is consecrated in analysing some of the rights women enjoy during coverture, that is, the period during which spouses live together as husband and wife. Note should be taken that these rights are enjoyed without force.<sup>24</sup> We shall also make a study of the responsibilities of a woman in marriage and family relations.

##### 3.1.1 Property rights

Authors have divided property into corporeal and incorporeal property, which under the civil code corresponds to the distinction between real and personal property.<sup>25</sup> According to Bells and Boyron,<sup>26</sup> corporeal property is tangible things, such as land and chattels (such as income, bank accounts, matrimonial home just to name a few) while incorporeal property are intangible things such as debts, shares and intellectual property rights (patents and copyrights). There are a number of ways through which property can be acquired: by transfer inter vivos or inheritance, by usucaption or prescription and the one common method being through sale. When people get married, everything seems rosy, but when problems crop up or when there is a breakdown in marriage, issue of ownership of property arises.

Under customary law, the general principle is that women are ordinary chattels, and so cannot own or inherit property. This position of customary law is reinforced with the payment of dowry. Dowry is an essential element in the formation of a customary law marriage, which once paid, gives the man full rights over the woman such as the right to chastise her by administering corporal punishment for serious misconduct such as adultery, keeping bad company or is found guilty of insubordination. These are fast fading away. The plight of the woman is worsened upon the death of her husband. When the husband dies, it is left for the widow to decide either to stay in her husband's compound to bring up their children, or remarries a surviving relative of her husband, who may be one of the husband's sons, young or elder brother as was in the case of *David Tchakokam v Keou Madeleine*.<sup>27</sup> In this case,

<sup>23</sup> See fn 6 above.

<sup>24</sup> *R v Jackson* (1891) 1QB 671 and *Nanda v Nanda* (1967) 3 All ER 101.

<sup>25</sup> Articles 516-7 and 527 of the French Civil Code.

<sup>26</sup> Bell J, Bell A and Boyron S “Property law” 29 January 1998, p279.

<sup>27</sup> Suit no.HCK/AE/K.38/97/32/92 (unreported) cited by Kiyé E “Conflict between customary law and human rights in Cameroon: the role of the courts in fostering an equitable gender society” African Study Monographs (2005) 88.

<sup>18</sup> Case No. 44/85-86 CRB 2/85/86 P.37 (unreported).

<sup>19</sup> Suit No. HCB/16MC/83 unreported.

<sup>20</sup> Suit no. HCB/100MC/87 (unreported).

<sup>21</sup> Suit No. HCB/59 MC/83 (unreported).

<sup>22</sup> Appeal No. CASWP/4/84 (unreported).

the defendant through levirate marriage was married to the nephew of her deceased husband, who took care of the deceased during his illness, and had several children.

Also, the widow may decide to return to her parents which in some tribes require the return of the bride price. The marriage officially terminates when the bride price is refunded. Most often, the wife's parents would dispute the quantum to be paid on the basis that she had rendered unpaid services such as giving him children. In *Buma v Buma*,<sup>28</sup> Monekoso J frowned at the custom of the Baba II people where the bride price must be refunded notwithstanding the services rendered or duration of the marriage. If she remarries without a refund of the bride price, then the husband to whom she owes a refund of the dowry has possessory rights over her children and corpse upon her death.<sup>29</sup> So for Time, customary law practices that are obnoxious and contrary to human decency should be set aside.<sup>30</sup>

Though dowry is an essential element in the formation of a customary law marriage, it has no legal effect in the formation of a statutory marriage.<sup>31</sup> Section 61 (2) of the CSRO prohibits the payment of dowry as a condition necessary for the validity of a statutory marriage, and punishes anyone who collects bride price in whole or in part from a third party on behalf of a woman already married with imprisonment from one to five years or with a fine from 5000 FRS to 500, 000 FRS.<sup>32</sup> Curiously, some courts have reverted to customs on the issue of dowry. In *Maya Ikome v Manga Ekemason*,<sup>33</sup> a non-payment of dowry led the Buea Court of Appeal in the south west province; today 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. This is one of the isolated decisions taken by the court.

The position of customary law has changed tremendously with the passing of legislative enactments at local and international levels. At the international level, Section 1 of the Married Women Property Act of 1882 accords married women the right to separate ownership of property before and even during marriage. In fact, the Act sees her as a single with right to own property and dispose of it without intervention from any trustee. Lord Denning, on his part sees husband and wife as two separate persons, equal partners in a joint enterprise, enterprise of maintaining a home and bringing up children.<sup>34</sup> He further stated that they live independently and go their own ways. Locally, the constitution being the highest law of the country guarantees to everyone the right to own,

use, enjoy and dispose of property.<sup>35</sup> This implies that men and women have the right to own property without discrimination.

### 3.1.2 Right to trade and open a separate account

Section 74 of the CSRO expressly gives to married women the opportunity to enrich themselves and that of their family through the exercise of a trade. While engaging in any trade of her choice, she must ensure it is different from that of her husband and beneficial to the marriage and children. Failing this, the husband may object to the exercise of her trade.<sup>36</sup> Husband and wife are prohibited by the Uniform Act on Commercial Companies and Economic Interest Group from being the main shareholders of a private limited company.<sup>37</sup> No reason is adduced for this, but one may presumed it is for the preservation of the family. With earnings realised from the trade, the woman may operate a separate account in her name,<sup>38</sup> from which she can make deposits and withdrawals as she so desires as well as purchase properties.

The income realised from the trade as well as investments made with her income will *prima facie* remain her properties. In *Moussi v Moussi*,<sup>39</sup> the High Court of Fako in granting a decree of divorce, ordered the husband to hand over movable property bought by the wife. On the same basis, if the husband opens an account in the name of the wife, the presumption is that the money in the account belongs to her as it will be presumed to be a gift to her.<sup>40</sup> In addition, a married woman may open a joint account with the husband. When couples decide to pool their resources together in the opening of a joint account, they will both have beneficial interest over the account in equal shares regardless of the amount of contributions. This is even so if the husband is the sole contributor to the account. If the wife is the sole contributor to the account, she *prima facie* takes the whole beneficial interest.<sup>41</sup> However, the husband can bring an action against the account if he can prove that a loan was contracted in the interest of the wife. For instance, if the wife owes a debt of 1,000 FRS to B in her personal capacity, the latter cannot pray for the attachment of the joint account in the names of husband and the wife.

### 3.1.3 Right to re-marry and inherit property

Like the Civil Code, the CSRO<sup>42</sup> does not provide a definition for the term marriage, but recognises two forms of marriage: statutory and customary law marriages. Lord Penzance in the case of *Hyde v Hyde*<sup>43</sup> offered a classic definition of marriage when he said: "I conceive that marriage, as understood in

<sup>28</sup> Appeal No. BCA/20/81: unreported.

<sup>29</sup> Time Victoria m "women, law, and human rights in Cameroon: progress or status quo?" journal of law and conflict resolution, vol. 6 (1) 2014 at 3

<sup>30</sup> Ibid.

<sup>31</sup> Section 70(1) CSRO.

<sup>32</sup> Section 357 of the Penal Code.

<sup>33</sup> CASWP/CC/76/85 Unreported

<sup>34</sup> *Midland Bank Trust Co v Green and Another v Green & Another* (No. 3) (1982) CH 529, 539.

<sup>35</sup> The preamble of the Cameroon's constitution.

<sup>36</sup> Section 74 (2) CSRO.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid, section 75.

<sup>39</sup> HCF/115/MC/87.

<sup>40</sup> *Body Lawson v Body Lawson*, HCF/129MC/86.

<sup>41</sup> *Heseltine v Heseltine* (1971) 1 ALL E.R. 952.

<sup>42</sup> Law No.81/02/ of 29<sup>th</sup> June 1981 on the Organisation of Civil Status Registration and Various Provisions relating to the Status of Physical Persons.

<sup>43</sup> (1866) L.R & 130.

Christendom may be defined as the voluntary union for life of one man, one woman to the exclusion of others". Lord Penzance's definition certainly applies only to monogamous marriage which may come to an end by a decree of divorce pronounced by a competent court while Justice Nganje's definition applies only to polygamous marriage. In *Motanga v Motanga*,<sup>44</sup> Justice Nganje defined marriage thus: "to my mind a marriage as known to the law of this country is the union between one man and one or more women to the exclusion of other men." Customary law marriage is one practice which contravenes a woman's right to equality with men; and no effort is made by the government to discourage this practice. Rather, it is encouraged and is prevalent among the Muslim communities in Cameroon.

Being the most preferred form of marriage, statutory or civil marriage is celebrated in accordance with the laws while customary marriage is celebrated in accordance with specific customary practices of the parties. Before entering into marriage, certain conditions relating to age, sex, consent and dowry must be fulfilled. Consent is an essential element in the formation of marriage and must be voluntary without any use of force. Where force is used, the marriage shall not be celebrated;<sup>45</sup> and the party who compels the other into marriage shall be punished with imprisonment from ten years and with a fine from 25, 000 FRs to 1,000,000frs.<sup>46</sup> The case of *David Tchakokam v Keou Madeleine*<sup>47</sup> substantiates this point.

While polyandry is not allowed, section 77 (2) of the CSRO recognises the right of a widow to re-marry in the event of the death of her husband.<sup>48</sup> In as much as a widow has the right to remarry, it is a taboo in an African context like ours for a woman to propose to a man. The exercise of this right to remarry is subject to the observance of 180 days of widowhood aimed at preventing uncertainty over the paternity of a child born after remarriage,<sup>49</sup> and without any claim over the woman, bride price or over her share of property.<sup>50</sup> A widow's share over her deceased husband's property is ascertain by the type of matrimonial regime (MR) chosen by the parties and her contributions made, whether direct or indirect. MR comes into existence only at the time of marriage when parties are required to choose their MR: separation of property (where property is divided in equal shares between the man and the woman) or community of property (where property is jointly administered and shared between the parties in the event of divorce or death of a

party).<sup>51</sup> When parties are silent, the law presumes that they are in for co-ownership.

It remains to be seen how a widow's share will be ascertained with reference to her contributions. In England, a wife can claim an interest in the house as a result of indirect contributions, if she can prove that her contributions had direct bearing to the purchase of the house in the sense that without her contribution, the husband could not have bought the property. If substantial, the court will give her an interest in the house as was in the case of *Nixon v Nixon*.<sup>52</sup> As for improvements on a house, a wife will claim an interest in the matrimonial home if she can prove that her contributions were substantial. In *Pettitt v Pettitt*, the House of Lords excluded jobs that would normally been done around the house and favours financial contributions towards improvements of real and personal property. **Pending reform, recourse can be made to the English law position or French civil code under which a widow's claim is on the grounds of unjust enrichment and financial needs.**<sup>53</sup>

Legislation does not limits women's inheritance rights but customary practices do, which by all standards contravenes national and international laws and human rights. Though customary law practices are contrary to the law, it is gaining grounds.<sup>54</sup> In *Achu v Achu*,<sup>55</sup> Ingish J posited that "customary law does not countenance the sharing of landed property between the husband and wife on divorce". This is because the wife is still regarded as the husband's property. In principle, upon breakdown of a marriage or death, the woman is considered as an object of inheritance. This practice is prevalent in Cameroon and it is perceived as a measure to control and maintain family property in the line of succession of male heirs, and providing to the married child the right to inherit will result in a loss of property over to her husband upon marriage.<sup>56</sup>

Customary law prohibits a woman from exercising the right to inherit property on the death of her husband, a practice that was challenged in *Elive Njie Francis v Hannah Efeti Mangah*.<sup>57</sup> In this case, the deceased was succeeded by his wife and eight children. On the death of the deceased, the deceased's nephew professed to have bought sackcloth for the widow, which according to their custom, made him next of kin to the deceased and the widow his property. On this basis and the decision of the family meeting which made him next of kin, the nephew applied to the Bwenga CC in Mutengene requesting the court to declare him next of kin. Before the application could reach the court, the widow had filed in a separate document requesting the court to declare her next of

<sup>44</sup> (Suit No. HCB/2/76 (unreported).

<sup>45</sup> Ibid, sections 52 (4), 64 and 65 (1).

<sup>46</sup> s356 of our Penal code.

<sup>47</sup> Suit no.HCK/AE/K.38/97/32/92 (unreported) cited by Kiye E "Conflict between customary law and human rights in Cameroon: the role of the courts in fostering an equitable gender society" African Study Monographs (2005) 88.

<sup>48</sup> Section 77 (2) CSRO.

<sup>49</sup> Art 228 CC. under this section, the widow has 300 days of widowhood.

<sup>50</sup> Ibid.

<sup>51</sup> Section 49 (9) CSRO AND Art 1387 CC.

<sup>52</sup> (1969) 3 All E.R. 113CA.

<sup>53</sup> Bells (fn 26) 259.

<sup>54</sup> Temnga J "Customary Law, Women's Rights and Traditional Courts in Cameroon" *Revue Generale de Droit*, vol 27, No. 3, 1996, 349.

<sup>55</sup> Appeal No.BCA/62/86 (unreported).

<sup>56</sup> Kiye (fn 17) 92.

<sup>57</sup> Court of Appeal of the South West Region: Suit No. CASWP/CC/12/98 (unreported).

kin. After proper vetting of the documents, the widow was declared next of kin on behalf of the children. Aggrieved with this decision, the nephew applied to the SWCA, which upheld the local court decision. This decision was based on the law which spells out the priority of inheritance in matters of intestate succession.

In *Nyanga Keyi Theresa & 4ors v Nkwingal Francis Nyanga & Keyim – administrators of the estate of keyi peter*,<sup>58</sup> the court reiterated the position of statute law with respect to intestate succession thus: “the law has made statutory the order of priority of administration of estate. From the statutory position, children of the deceased have priority over the first defendants who is brother and cousin and no matter the problem between the deceased and his children; nothing will and shall deprive the children of their right of inheritance in the case of intestacy.”<sup>59</sup>

Inheritance or property rights are the core of any divorce proceedings. In *Alice Fodje v Ndasi Kett*,<sup>60</sup> parties contracted a customary law marriage in accordance with the customs of the people of Bali and were blessed with four children. In 1981, the appellant, Alice left the MH and respondent took the second wife. In 1983, the respondent petitioned for a divorce before the Bali CC and was granted while the appellant was allowed to occupy one of the three houses and to collect rents from the other two. Like many customary law cases, this case and many others are one isolated decisions. On the same strand of reasoning, the Supreme Court in *Chibikom Peter Fru % 4ors v Zamcho Florence Lum*,<sup>61</sup> rebuffed the custom of the Mankon people on the premises that it violates the preamble of the constitution by discriminating against Florence as a female and because it offends section 27 of the SCHCL.

According to the case, Peter died intestate leaving behind several children, with the eldest of them being Florence, the only surviving daughter. Upon the death of the father, Florence applied before the Mankon CC for a next of kin declaration and was temporarily declared the next of kin of the estate, pending the selection of a successor. On the strength of the next of kin declaration, she was awarded letters of administration. In 1989, some members of the family brought an action before the HC of Bamenda requesting for the cancelation of letters of administration granted to Florence. The judge dismissed the application but ordered Florence to give an account of her administration to the administrator general. Dissatisfied with the decision, they appealed to the Bamenda Court of Appeal, which ruled in their favour by disqualifying Florence from administering the estate. In response, Florence appealed to the Supreme Court who annulled the decision of the Appeal Court and referred the matter to the South West Court of Appeal in Buea (SWCA) for hearing and determination. In determining the case, the SWCA rebuffed the claim that Florence was not “a

fit and proper person to administer the estate” and concluded that “

We have no doubts that a local custom which prohibits married females from benefitting on the intestacy of their parents is repugnant to natural justice, equity and good conscience and violates the preamble of our Federal Constitution in that it is discriminatory. Such a custom is void and should never be enforced (cited in CCR, part 2, 1997:291).<sup>62</sup>

### 3.1.4 Right of the wife to use the husband's name

Although there is no legislation in Cameroon to this effect, it is the right of a woman to use her husband's surname. This is so even after the termination of the marriage or death of the husband.<sup>63</sup> This cannot be objected by the husband except where she attempts to defraud him or third parties. When this happens, an injunction will be ordered to avert the wife from using the name. In the author's view, it would be unimaginable for a woman to continue to use the husband's name after a successful divorce. However, under customary law, a woman is allowed to use her husband's name until a divorce is pronounced by a competent court, after which the woman will be called miss. In *Theckla Atabong v Bernard Asong Fomengia*,<sup>64</sup> the Muyuka CC expressly stated that, beginning from the date of the judgment, the plaintiff would be called Miss *Theckla Atabong*. In the same light, the Mankon CC decided in the case of *Precilia Fet v Michael Awah*,<sup>65</sup> that from the date of judgment, the petitioner was to be addressed as miss *Precilia Fet* and no longer as Mrs. *Awah*. This was again practiced in the Santa CC in the case of *Fri Achu Rachael v Edwin Akum Tetang*.<sup>66</sup>

Apart from the use of the surname, married women may equally use certain titles acquired during certain events. For instance, in Bangwa, the chief is called a ‘fon’ while the first wife immediately assumes the title of ‘Ndgwinkongoh’ while in Mankon; the chief is called ‘Fo’ while the wife is called ‘Mafo’ (mother of the chief). Unfortunately, these practices are not documented.

### 3.1.5 Right to sexual intercourse

This right continues after the marriage has been consummated as long as it is not regular. At common law, a woman can never say no to her husband's demand which explain why he cannot be charged for rape on his wife.<sup>67</sup> However, a man would be charged for rape only if a decree of judicial separation or decree nisi of divorce is pronounced. In England today, a man can be found guilty of rape on his wife while section 296 of the Penal code punishes with imprisonment

<sup>58</sup> High Court of Fako Division: Suit No. HCF/AES57/97-99: unreported.

<sup>59</sup> Kiye (fn 17) 90.

<sup>60</sup> Appeal No.BCA/45/56 (unreported).

<sup>61</sup> Supreme Court Judgment No. 14 OF February 14, 1999.

<sup>62</sup> Kiye (fn17) 92.

<sup>63</sup> *Fendal v Goldsmith* (1877) 2PD 263.

<sup>64</sup> CS No. 156/83-84 (unreported).

<sup>65</sup> CS No. 16/85-86 (unreported.)

<sup>66</sup> CS No. 13/85-86 (unreported).

<sup>67</sup> *R v Clarkson* (1882) 22 QBD 22

from 5 to 10 years anyone “whoever by force or moral ascendancy compels any female whether above or below the age of puberty to have sexual intercourse with him....” For purpose of procreation, it would be unacceptable under customary law to refuse to have sexual intercourse with her husband except when she is seriously ill, menstruating or breast feeding. This continues even after separation which explains why children born during the separation belong to the husband.

Furthermore, a wife may claim for herself and the children, alimony.<sup>68</sup> Alimony is a periodical payment made by the husband for evading or deserting the MH without valid reasons.<sup>69</sup> It is to be noted that such a payment would be made only if the wife is in need in accordance with the possibilities of each of the parties. In *Atem v Atem*,<sup>70</sup> the court ordered the husband to pay the sum of 30,000 FRS monthly to the wife pending the decree absolute of divorce. If need be, the wife may be authorised to detain a part of the salary, work proceeds or income of the husband.<sup>71</sup> In the light of the foregoing, one may conclude that the law is more protective of women.

### 3.2 Women's responsibilities

Administration of a child's property, upbringing, care, custody and control are aspects of parental responsibility generally exercised by both or one of the parents or exceptionally by a third party or public authority. It is also the joint responsibility of the parents to look after children born out of wedlock. In case of disagreement, control shall be exercised by the parent who has effective custody of the child save the judge decides otherwise.<sup>72</sup> These responsibilities are towards minor children because they are unable to look after themselves. Parental responsibilities have an unlimited duration, that is, it does not end but may cease upon the death of the child or when he attains majority.<sup>73</sup> Among the different responsibilities, the woman may:

#### 3.2.1 Contribute to the cost of running the home

Section 75 (1) of the CSRO obliges a woman to contribute to the cost of running the home. In this respect, the woman is expected to provide allowances for the upkeep of the family. At common law, if the husband provides the wife with allowances, he is *prima facie*, in the absence of any evidence to the contrary, entitled to any balance and property acquired out of such money.<sup>74</sup> Lord Denning holds a dissenting view to the effect that, in such a case, a wife's skills and economy should not be ignored as against the husband's earning capacity. For him, a woman's skills and economy should be

considered. This injustice is remedied by section 1 of the MWPA which states:

If any question arises as to the rights of a husband or wife to any money derived from any allowance made by the husband for the expenses of the matrimonial home or for similar purpose, or for any property acquired out of such money, the money or property shall, in the absence of any agreement between them to the contrary, be treated as belonging to the husband and wife in equal shares.

From the foregoing, it stands to reason that, in the absence of any agreement between the wife husband on any money derived and property acquired from allowance, it shall be treated as belonging to them both.

As earlier indicated, parents have a joint responsibility over children born out of wedlock. In case of disagreement, control shall be exercised by the parent who has effective custody of the child save the judge decides otherwise.<sup>75</sup> Custody is a legal concept with a restricted and wider meaning. In a restricted sense, it means physical possession and control of the child's movement while in its wider sense pointed Sachs J,<sup>76</sup> it is equivalent to guardianship which embraces a bundle of power and rights to be exercised until a male attains 18 years and the female marries. Parents if married have joint rights and authority, that is, equal responsibility exercised without the other. The welfare principle which since 1996 has been replaced by the phrase “best interests”<sup>77</sup> guides the court in making custody orders. The paramountcy of the principle is engrafted in the Guardianship of Minor's Act 1971 which states clearly that in a legal proceedings where the legal custody or upbringing of a child, administration of his property or application of income thereof is in question, the welfare of the child is considered first and paramount without consideration of whether or not the claims of the father is superior to that of the mother and vice versa.

In principle, before a custody order is granted, the court considers every circumstance and seeks the view of an expert (social welfare officer).<sup>78</sup> Before the expert gives his opinion, he must investigate the living conditions of the parties. The case of *Ngaleu Jean Baptist v Pouambe Kouaney Justin*<sup>79</sup> is instructive. In this case, Deba J granted custody of all children to the mother because the father neglected them when they fell ill while their mother showed them love and affection. The granting of a custody order rests on a number of factors: the first being the interest or welfare of the child. This is seen as the first and paramount consideration. In *Engo v Engo*,<sup>80</sup> custody was given to the mother because the father was

<sup>68</sup> Section 76 (1) 2011 CSRO.

<sup>69</sup> Section 358 Penal Code punishes with imprisonment from 3 months to 1 year or with a fine of 5000 frs to 5000frs a spouse who evades the family home without valid reasons.

<sup>70</sup> HCSW/77/mc/82 (unreported).

<sup>71</sup> Section 76 (1) CSRO.

<sup>72</sup> Section 47 2011 CSRO.

<sup>73</sup> *Hewer v Bryant* (1970) 1QB 357, 350.

<sup>74</sup> *Blackwell v Blackwell* (1973) 2 All E.R. 597.

<sup>75</sup> Section 47 2011 CSRO.

<sup>76</sup> *Hewer v Bryant* (1970) 1QB 357, 350.

<sup>77</sup> See Lindley J in *Re McGrath Infant* (1893) 1 CH 143.

<sup>78</sup> *Mendi v Mendi* Suit No. HSCW/30/Mc unreported.

<sup>79</sup> Suit No. HCSW/32MC/unreported.

<sup>80</sup> (1971-73) UYCR 20.

always on the move. Second is the wishes of the child which may however be disregarded if it is contrary to the child's welfare. Age, sex and health of the child are equally considered as well as the character of the parents. In contrast, custody will not be given to an unconventional parent for example a homosexual or one who adopts an unusual lifestyle, but to a conformist parent. It should be noted that a parent deprived of custody is granted reasonable access to the child except forbidden by a court order.<sup>81</sup>

### 3.2.2 Birth registration

Article 7 (1) of the United Nations Convention on the Rights of a Child<sup>82</sup> recognises that every child has the right to be registered immediately after birth, to a name, to acquire a nationality and the right to know and be cared for by his or her parents.<sup>83</sup> States are to ensure this provision in accordance with their national law.<sup>84</sup> Within this context, the 1981 CSRO requires parents to declare to the competent civil status registrar the birth of a child born within 60 days following such birth [for the issuance of birth certificate].<sup>85</sup> It should be mentioned that "no mention of the father's name may be made on an [illegitimate] child's birth certificate save in cases of recognised or legitimate children".<sup>86</sup> It follows therefore that with illegitimate children, a woman has the right to mention or not the child's father name. Where nothing is known of the father and mother, the space so provided for the surname shall be left open.<sup>87</sup>

The importance of birth certificate and birth registration cannot be over-emphasized. A birth certificate does not grant nationality but provides the evidence needed in the grant of nationality while birth registration helps to ascertain a person's nationality.<sup>88</sup> Nationality is an important concept but regrettably there is no accepted definition for the term. According to Brownwen,<sup>89</sup> nationality and citizenship are used as synonyms in international law and further defines nationality as "the status that gives a person rights and obligations in relation to a particular state". Each state is expected to lay down rules governing the acquisition of nationality. In the acquisition of nationality, states must ensure that there is a genuine link between the individual and the state, failing which the individual will not be granted nationality and thus will not be entitled to the rights pertaining to nationality.<sup>90</sup> The International Court of Justice (ICJ) accentuates this point in the case of *Nottebohm (Liechtenstein*

*v Guatemala*).<sup>91</sup> In this case, Nottebohm, a Guatemala citizen, while on a visit to Europe, acquired Liechtenstein's nationality and returned to Guatemala where he resumed his former business activities until his removal as a result of war measures. Given that there was no genuine link between Nottebohm and Liechtenstein, the ICJ held that he was not entitled to put up a case against Guatemala. For this reason, Liechtenstein was prohibited from exercising diplomatic protection against Nottebohm.

The Cameroon nationality law<sup>92</sup> makes no distinction between nationality and citizenship, and as such would be used interchangeably. The law provides for three ways through which nationality can be acquired: birth, marriage and naturalisation. Among these methods, birth is the oldest and follows the *jus sanguinis*. This is so regardless of the status (illegitimate or legitimate) of the child.<sup>93</sup> However, Cameroon nationality would be conferred on a person who at the time of presentation of his request has attained 21 years, can show proof of habitual residence of five consecutive years, has his main interest in Cameroon; he is sound in body and mind and is of good character and morals.<sup>94</sup> Upon acquisition of Cameroonian nationality, the person enjoys the rights to education, association, employment, and housing with duties such as payment of taxes, respect of the laws and to participate in the head count organized by the state.<sup>95</sup>

In Cameroon like in many African countries where women are regarded as subordinates, do not have the right to pass on to their spouses and children their nationality except for illegitimate children. Worse still, they cannot acquire, change or transfer their nationality. Stateless women and girls face heightened risks of abuse in terms of conflicts because "they do not enjoy the protection that flows from citizenship, consular services, access to social services and participation in political processes".<sup>96</sup> Statelessness is prevalent but unknown to many in Africa.

Article 1 of the 1954 Convention defines a stateless person as someone "who is not considered as a national by any state under operation of its law".<sup>97</sup> Stateless persons are equally described as persons without recognition of a nationality due to lack of recognised documents.<sup>98</sup> This has placed many in horrible conditions and subjected others to regular extortion by immigration officers or police.<sup>99</sup>

<sup>81</sup> *M V M* 1973, It was stated in this case that access to a child is a right to the child and not parental right.

<sup>82</sup> Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 OF 20 November 1989.

<sup>83</sup> *Ibid*, article 18.

<sup>84</sup> *Ibid*, article 7 (2).

<sup>85</sup> Section 30 of 2011 CSRO.

<sup>86</sup> Section 34 (2) 1981 CSRO.

<sup>87</sup> *Ibid*.

<sup>88</sup> Brownwen Manby, *Nationality, Migration and Statelessness in West Africa: A Study for the UNHCR*, June 10 2015, UNHCR Regional Office for West Africa, Dakar, Senegal; available at [www.rodakar.iom.int](http://www.rodakar.iom.int).

<sup>89</sup> *Ibid*.

<sup>90</sup>

<sup>91</sup> ICJ Judgment of 18 November 1955. See [www.icj-cij.org](http://www.icj-cij.org).

<sup>92</sup> Law No. 1968-LF-3 of 11<sup>th</sup> June 1968 (otherwise called the Nationality law).

<sup>93</sup> Nguindip Nana "The Complexities of citizenship and nationality under Cameroonian law" *IJARP*, Vol. 1, issue 1, July 2017, 56.

<sup>94</sup> Nationality Law (fn 91) section 25.

<sup>95</sup> Fombe Georgewill "Cameroon: civic responsibility" *Cameroon tribune*, 14 November 2005 at <http://allafrica.com>.

<sup>96</sup> UN (fn1) 20.

<sup>97</sup> The United Nations Convention relating to the Status of Stateless Persons, 1954.

<sup>98</sup> Brownwen (fn88) 1.

<sup>99</sup> *Ibid*.

Hundreds of people are at risk of statelessness and for Brownwen, it can be attributed to the gaps in the nationality laws and policies that detains many without a nationality; gender discrimination, people affected by transfers of territory; orphans and weak civil registration systems.<sup>100</sup> Irrespective of the reasons, states are call to eradicate stateless by 2024, protect stateless persons even though it is not a substitute for possession of nationality and to provide them with identity papers and travel documents. In addition, states are required to facilitate the assimilation and naturalisation of stateless persons excluding individuals who have committed crimes against the people, humanity or a serious non-political crime abroad.<sup>101</sup>

#### IV. LAW REFORM

Even though women are protected in marriage and family relations, discrimination against them is still prevalent.<sup>102</sup> This contravenes national, international laws as well as the basic human right to equality which is guaranteed to all in the country. In the light of the various discriminatory practices discussed above, the article settles for a reform of existing discriminatory customary laws and practices that have hindered the realisation of equal treatment between men and women so as order to avoid conflict of laws thereby promoting equality. In so doing, the author calls for the codification of the existing customary laws in order to avoid conflict of laws. The more than 250 ethnic tribes manifesting different cultural backgrounds makes Cameroon rich in conflict of laws and difficult to handle marriage and family disputes. For instance, if a man from the west region of Cameroon decides to marry a woman from Mamfe, there would be the problem of choice of law and forum for divorce because parties are from different legal backgrounds.

This matter is worse if the parties reside in a different town say limbe. In *Feute v Feute*,<sup>103</sup> the Limbe CC settled that the suit is filed either at the court where the petitioner was born or where the marriage was celebrated. However, the matter could be transferred from one jurisdiction to another based on valid reasons advanced by the petitioner. In *Jator v Jator*,<sup>104</sup> the respondent successfully asked for the matter to be transferred from Wum to Mbem court, mwa subdivision arguing convincingly that the petitioner, a state counsel would use her position to influence the decision of the court.

Again, the article recommends for the codification of all laws in force relating to marriage and family life such as the CSRO and the civil code. Codification is the process of collecting and arranging laws of a country or state into a code.<sup>105</sup> The search for a code consists of identifying common sets of concepts, principles and divergent principles to be evaluated by a working committee. The working committee should be

composed of the different stakeholders such as magistrates, lawyers, notaries and academics. The committee should be entrusted with the task of investigating the feasibility of the project, carrying out a comprehensive study on the different laws, and presenting a draft document. The committee should finalise the draft version, and then forward the final copy to the parliament for adoption.

Research and training on the adopted code are an important part in the codification process as they contribute substantially to the understanding and dissemination of the code. In this respect, once the code has been adopted, It should be taught at the very first year of law school or any university in the country, as this will equip students, academics, legal professionals, and even politicians with a better understanding of the code. Policy choices regarding the content of the code should include among other things concepts, common and divergent principles with a uniform approach on the payment of dowry in the country so as to avoid extortion.

#### V. CONCLUSION

Upon marriage, a woman is automatically entitled to a bundle of rights such as the right to remarry, inherit property just to name a few. In spite of the rights, they are still being discriminated against by the society and the laws in place. In this respect, the article calls for a reform of the existing discriminatory laws and practice so as to avoid conflict of laws and ensures equality. Again, the article recommends for the codification of all laws in force relating to marriage and the family by a committee task to investigating the feasibility of the project, carrying out of a comprehensive study on the different laws, and presenting a draft document. The committee should finalise the draft version, and then forward the final copy to the parliament for adoption. For dissemination of the code, the article calls for training on the adopted code which to the author is an important part in the codification process.

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<sup>100</sup> Ibid, 2.

<sup>101</sup> Ibid, article 2 (iii).

<sup>102</sup> See paragraph 3.1.3 above.

<sup>103</sup> CS No. 96/86-87 CRB 3/86-87 P 109: unreported.

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<sup>105</sup> Black's law Dictionary Free Online legal Dictionary, 2<sup>nd</sup> Edition.

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