The Recognition of Customary Marriages in Cameroon: The Road not taken

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Abstract

This article analyses the recognition of customary marriages in Cameroon. Although the Civil Status Registration Ordinance 1981(CSRO) which is the major law on marriages in Cameroon recognizes some practices associated with customary marriage, it is a dead institution in Cameroon. The study makes use of the qualitative research methodology and the method adopted is the doctrinal method. Findings reveal that marriages celebrated according to native laws and customs must confirm to the requirements for the validity of civil marriages enshrined in the CSRO. For the effective recognition of customary marriages in Cameroon, it is a recommended that a statute should be adopted akin to the Recognition of Customary Marriages Act 120 of 1998 South Africa that regulates to a minimal level the procedure for the registration of customary marriages and also the empowerment of the customary court system to hear matters on customary marriages and divorce arising from such marriages.

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Introduction

Customary marriage is marriage celebrated according to native laws and customs. Horn and Rensburg[i] define customary marriage as "as a contract or agreement between two families which includes the payment of a 'bride-price' (lobolo), permits polygamy and obligates all parties to perform specific duties". As far as customary marriages are concerned, there is no choice of polygamy or monogamy. Customary marriages are *de jure* polygamous irrespective of the fact that the husband does not exercise his right to take a second wife.[ii]

The polygamous status of customary marriage is reflected in the definition provided by MR. Justice Nganjie in the case of *Motanga v. Motanga*.[iii] He stated: "To my mind, a marriage as known to the Law of this country is the union between a man and one or more women to the exclusion of other men."[iv] This definition finds justification in the Civil Status Registration Ordinance No. 81/02 of 29th June 1981 (here after referred to as CSRO) of Cameroon (as amended). The statute recognizes polygamy. Going by section 49(new) of the CSRO, the spouses to be have to specify the type of marriage in the marriage certificate; the options being polygamy or monogamy. Actually polygamy means the taking of more than one wife by a man (Polygyny) and the taking of more than one husband by a woman (polyandry).Justice Nganjie's definition actually refers to polygyny, which is the form of polygamy practiced in Cameroon.

It is worth noting that polygamy is a feature of customary marriage. It does not mean all polygamous marriages are customary marriages. Under the CSRO, civil (statutory) marriage can either be polygamous or monogamous. Section 49(New) sub-5 of the CSRO is illustrative. It is to the effect that the parties have to mention the type of marriage in the marriage certificate, whether polygamy or monogamy. So because parties choose polygamy, does not imply that the marriage is customary marriage. In *Mburu Stephen v. Mbiekwi Grace Tabah*,[v] the Court of Appeal of the North West Region noted that a marriage celebrated by a Civil Status Registrar, 'whether it is monogamous or polygamous, is not a customary marriage'. This reasoning finds justification in scholarly works. Acha-Morfaw[vi] notes:

> While all customary marriages are polygamous, all polygamous marriages should not necessarily be customary. The Customary Courts only ought to have jurisdiction over

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> those polygamous marriages celebrated in accordance with native law and custom.

The above assertion is in accordance with the CSRO that allows the parties to choose between polygamy or monogamy in a civil (statutory) marriage.

The celebration of customary marriages is often proven by public celebration. It usually involves the families of the groom and bride consenting to the union. The family of the bride receives the groom and his family and traditional rites are conducted. The traditional rites are obviously according to the bride's native laws. For instance, if the custom of the bride's family requires two big pigs as a necessary item before the family consents, then the groom's family has to comply with this requirement. Upon being satisfied that the list of items requested by the bride's family has been presented, consent is given and the marriage is concluded.

The consent of the girl's parents is a vital requirement in the conclusion of customary marriages. In the Nigerian case of *Adisatu Awero v. Olajida Ishola*,[vii] the court held as invalid, customary marriage without the parent's consent. The same reasoning was arrived at in the case of *Dura Aonde v. Yomekaa Agoii*[viii] where the High court of Benue State of Nigeria stated that "no marriage is valid under the Tiv customary law unless the father or the person acting loco parentis consents."[ix]

Custom is a source of law in Cameroon. Even though it does not have explicit constitutional foundation,[x] statutes have not failed to give value to it. It is worth noting that unlike other sources of law such as legislation which enjoy automatic enforcement in the Courts, customary law[xi] is dependent on some requirements or better still validity tests for its enforceability. In other words, for any custom to be recognized and enforceable in the Courts in Cameroon, it must survive the validity tests. Going by the validity tests, for customary law to be valid and consequently enforceable, it must meet the statutory requirements laid down for its applicability.[xii]

In Anglophone Cameroon, for custom to be considered law, it must satisfy what Mikano[xiii] termed the "Duality Tests". The duality test is a combination of the requirement of repugnancy and incompatibility stipulated in Section 27(1) of the Southern Cameroon High Court Law 1955. It provides:

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> The High Court shall observe and enforce the observance of every native law and custom is not repugnant to natural justice, equity and good conscience, not incompatible either directly or by implication with any law for the time being in force, and nothing in this Act shall deprive any person of the benefit of any such native law and custom.

Connecting the above with customary marriage, it goes without saying that the 'duality tests' also applies to customary marriages. This implies that any customary marriage which is repugnant to natural justice, equity and good conscience or incompatible with any Cameroonian legislation is invalid.

The Position of the Civil Status Registration Ordinance 1981

The Civil Status Registration Ordinance of 1981 (CSRO) recognizes customary marriages.[xiv]The most visible provision is section 81(1) of the CSRO. It states: "Customary marriages shall be registered in the civil status registers of the place of birth of or residence of one of the spouses". The President may however by decree prohibit the celebration of customary marriages on or part of the territory.[xv]

The involvement of customary authorities in the celebration of marriages is recognized in the CSRO. Pursuant to section 58 of the CSRO, a customary authority within one month before the celebration of marriage may object to the celebration of the marriage in case of customary incest. A customary authority can give consent for a spouse to be who is a child in place of the unknown father and mother.[xvi] According to section 69(1) of the CSRO, the customary heads shall be present at the marriage celebration where their consent is required.

The CSRO recognizes customary marriages without proffering a definition for it. Article 4 of the Revised Family Code of the Federal Republic of Ethiopia 2000 defines customary marriage thus:

> Marriage according to custom shall take place when a man and a woman have performed such rites as deemed to

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> constitute a valid marriage by the custom of the community in which they live or by the custom of the community to which the belong or to which one of them belongs.

The above definition seems to be the position in Cameroon if one considers decided cases. In a good number of cases, customary courts have decided divorce matters celebrated in according to native laws and customs.[xvii]

It can be observed that customary marriage is vaguely recognized in the CSRO. The CSRO does not prescribe specific procedure for the celebration and registration of customary marriage. What the CSRO provides with regard to the celebration and registration of customary marriage is examined below.

Celebration of Customary Marriage

As already pointed out, the CSRO has no specific procedure for the celebration of customary marriage. The reason for this lacuna could be that there are a plethora of ethnic groups in Cameroon each with its own customary rules for the celebration of marriage. However, the formalities for the celebration of customary marriage and civil marriage have been consolidated in the CSRO. So the CSRO provides general formalities for the celebration of marriage in general. It becomes imperative to briefly discuss these formalities.

Before delving to the formalities, a valid marriage must meet certain conditions. First, no marriage is valid in Cameroon if the spouses to be do not have the capacity to enter into the marriage contract. Second, the parties must meet the required age. Section 52 (1) of the 1981 Civil status Registration Ordinance provides: "No marriage may be celebrated: (1) If the girl is a minor of 15 years old or the boy of 18 years old, unless for serious reasons a waiver has been granted by the President of the Republic." Third, the spouses to be must not be of the same sex. According to section 52 (3) of the 1981 Civil Status Registration Ordinance, a marriage may not be celebrated if the spouses- to-be are of the same sex. It is also a requirement in the CSRO that neither party in the Case of a monogamous union should be already married.[xviii] Again, the spouses to be must not be within the prohibited degrees of consanguinity and affinity. According to the 1981 ordinance, the celebration of a marriage may be objected

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to by a customary authority, particularly in case of customary incest.[xix]Consent is another requirement.The spouses-to-be must freely consent to the marriage.[xx]

Concerning the formalities, the starting point is the competent officer. Section 48 of the 1981 Civil status registration ordinance provides that a marriage shall be celebrated by a civil status registrar of the place of birth or residence of one of the spouses to be.[xxi] Section 53 of the CSRO provides for the publication of banns prior to the celebration of marriage. It is to the effect that, at least one month before the celebration of the marriage, a declaration mentioning the full names, occupation, residence, age and place of birth of the spouses-to-be and their intention to contract marriage shall be lodged with the civil status registrar.[xxii]

The marriage is celebrated following the publication of banns and in the absence of any objection, by the civil status registrar in the simultaneous presence of the spouses-to-be (or the representative of the absent spouse in cases of section 66 (1) and (2) as well as 67 (1) and (2), who express their consent in his presence.[xxiii]

From the conditions and formalities examined above, it can be deciphered that customary marriages have to confirm to the standards of civil marriages enshrined in the CSRO. Any marriage inconsistent with these formalities is not recognized as marriage. Scholars have criticized such a legislative act. Golding[xxiv] depicting what obtains in Canada asserts:

> In all cases, Canadian Indigenous-law marriages are recognized only so far as they are able to adhere to the European standard, and are only thought to grant the rights, privileges,and obligations that civil marriages allow. In short, “customary marriages” are recognized as being functionally, substantively, and axiologically equivalent to civil marriages, while anything which does not fit within this mould is tossed aside as being superfluous or even socially dangerous.[xxv]

The above assertion fits in Cameroon if one considers the duality test enshrined in section 27(2) of the SCHCL 1955. The duality test reduces the value of custom as a source of law in Cameroon. It can be inferred from the test that any marriage celebrated according to native

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laws and custom that is repugnant to natural justice, equity and good conscience or incompatible with existing legislation is not valid. The courts have nullified the customary practice of levirate marriage[xxvi] on the ground that it is contrary to natural justice, equity and good conscience. In *David Tchakokam v. Keou Magdaleine*[xxvii] it was stated that "any custom which says that a woman or any 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."[xxviii] The CSRO also disapproves levirate marriage in its section 77(1). It states: "in the event of death of the death of husband, his heirs shall have no right over the widow nor over her freedom or the share of property belonging to her…".

Registration

The CSRO does not prescribe the procedure for the registration of customary marriages. It merely states that: "customary marriages shall be registered in the civil status registers of the place of birth of or residence of one of the spouses".[xxix] There are many issues pertaining to the registration of customary marriages which ought to be addressed and have not been addressed in the CSRO. First, it is not clear whether customary marriages celebrated before 1981 (the entry into force of the CSRO) can be registered or registration is restricted to customary marriages celebrated after 1981. Second, who can apply for the registration of a customary marriage is not spelled out in the CSRO. In the absence of this, one can conclude that someone not party to the customary marriage can apply for registration.

Customary marriages have been given greater value and recognition in other jurisdictions in terms of celebration and registration. Ethiopia Constitution 1995 recognizes customary marriages and allows customary law to be applied in adjudication of disputes relating to personal and family law. In Kenya, registration of customary marriages is governed by the Marriage (Customary Marriage) Rules, 2017, under the Marriage Act.[xxx] The Act lays down detail procedures for the celebration and registration of customary marriages, ranging from notification of intention to marry to the Registrar to application for registration.

In South Africa, the recognition of customary marriage is enshrined in the Recognition of Customary Marriages Act 120 of 1998. Its section 4(a) states: "A registering officer must, if satisfied that the spouses concluded a valid customary marriage, register the marriage by

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recording the identity of the spouses, the date of the marriage, any lobolo agreed to and any other particulars prescribed". The "lobolo" means dowry which is fundamental in the recognition of customary marriages in South Africa.

The above provision indicates the essential requirements for the conclusion of customary marriage. A specific requirement worth emphasizing is the "lobolo" (dowry). In Cameroon, the CSRO does not make payment of dowry a condition for formation of customary marriage in Cameroon. Section 70 of the CSRO is clear on this. It states:

> The total or partial payment or non-payment of any dowry, the total or partial execution or non-execution of any 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 dotal or matrimonial agreement shall be rejected on the grounds of public policy.[xxxi]

Dowry and bride price have different meanings but they are often used interchangeably. In Western jurisprudence, dowry is property which a girl receives from her parents upon marriage and which forms part of her ante-nuptial property.[xxxii] Generally, dowry is the monetary value of anything which is transacted at the time of or afterwards of marriage between the bride-groom and bride's family as a demand.[xxxiii]In the strict sense the payment given by the groom to the bride is not regarded as the dowry; it is called dower or Mahr.[xxxiv] Dowry is therefore the payment given by the bride to the groom as his demand is called dowry. The Limitation of Dowry Law of 1956 Nigeria defined bride price as "...any gift or payment in money natural produce, brass rods, cowries or in any other kind of property whatsoever, to a parent or guardian of a female person on account of marriage of that person which is intended or has taken place."[xxxv] The provision of bride price in customary marriages cannot be overemphasized. Nzalie[xxxvi] asserts that "the bride-price constitutes a sort of "registration" of customary marriage since it is such an overt and notorious act witnessed by many people that it is impossible later to deny having received it".

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The refund of the bride price has the effect of dissolving customary marriage except the husband decides not to collect it.[xxxvii] In the case of *Ezeaku v. Okonkwo*[xxxviii] the court of Appeal noted:

> *Usually the dissolution of customary law marriage is effected or accompanied by the refund of the bride price paid in respect of the marriage….. the refund of the bride price is one of the important subjects to be settled by the family group that unsuccessfully attempts to reconcile the parties it is however open to a husband to exercise or renounce his right to claim a refund of the bride price. Any renunciation of that right must be (done) formally and equivocally …. In that case, the marriage will be regarded as dissolved from the time of renunciation and there will be no need for the bride price to be actually refunded.*

Similarly, in the case of *Eze v.Omeke*,[xxxix] the court held inter alia, that it is the refund of the bride price or dowry that puts to an end all incidents of customary law marriage and not an order of any court dissolving the marriage.

In *The Estate of Agboruja*[xl] it was explained that the basis of the custom was to ensure the continued maintenance of the widow and her children and was not repugnant as contended by the widow; unless it could be shown that the new husband was wicked towards that family when the deceased was still alive. The male relative becomes a new father for the children and is responsible for their upbringing as if they were his own children.

Customary Courts

The customary court is a recognised court in Law No 2006/015 of 29th December 2006 as amended and supplemented by Law No 2011/027 of 14th December, 2011.[xli]Customary courts have competence in civil matters, customary marriages, divorce and inheritance.[xlii] These courts apply native laws and customs.

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Formerly, customary courts exclusively exercised jurisdiction over matters arising from customary marriage such as divorce.[xliii]Nowadays, following the amendment of the Law on Judicial Organisation in 2006, the High Court is competent to hear divorce matters in general.[xliv]The jurisdiction of the High Court in divorce matters seem confusing given that customary courts have not been relieved of their competence in divorce matters arising from customary marriages.[xlv]It goes without saying that the High Court can entertain divorce matters arising from both customary and civil (statutory) marriages while the customary court exercises jurisdiction in divorce matters in customary marriages. This is actually conflict of laws which is a serious issue for the courts to deal with. Case law evolution in Cameroon has resolved this conflict. Before 2006, the courts adopted the view that the customary court reserves its jurisdiction in divorce emanating from customary marriages. For example, in *Sandjo v. Sandjo*[xlvi] the Court of Appeal reversing the decision of the High Court declared that the proper court to hear the divorce petition was the customary court and not the High Court considering that the marriage in question was according to the Bangante Native law and Custom. The Court of Appeal North West in *Chumboin née Nikieh Prudencia v. Chumboin Pius Akom*[xlvii] noted "it is now settled law that whereas customary law courts have jurisdiction over polygamous marriages, [not customary marriages] only the High Courts are competent to entertain suits relating to monogamous marriages."[xlviii]

After 2006, following the amendment of the Law on Judicial Organisation, the approach of the courts changed towards accepting the exclusive jurisdiction of the High Court in marriages and divorce in general. The case of *Dima Gladys Marie Gabrielle v. Bendegue Nyama Germain*[xlix] is illustrative. The issue of jurisdiction of the Limbe customary court was raised by the petitioner. The petitioner argued that her marriage was monogamous and on the basis of this requested the High Court of Fako to nullify the decision of the Limbe customary court and grant her divoce. The Judge citing section 18(1) (b) of Law No 2006-015 of 29th December 2006 on Judicial organization, noted that the High Court is the only competent court to try issues relating to probate, matrimonial causes and divorce. In *Achu Christopher Mokom v. Tezeh Judith Nanga*[l] the High Court of Mezam division granted divorce in a polygamous marriage celebrated by a Civil Status Registrar according to the native law and custom of the Pinyin people.

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In *Mburu Stephen v. Mbiekwi Grace Tabah*,[li] the Court of Appeal of the North West Region stated that a marriage celebrated by a Civil Status Registrar, 'whether it is monogamous or polygamous, is not a customary marriage'. The precedent in this case was applied in *Mbake Martin Ikome v. Wase Bokwe Helen*[lii] where the Court of Appeal of the South West Region reiterated the High Courts unfettered competence to hear all matters without exception pertaining to marriages or divorce.

Conclusion

The CSRO shilly-shallies on the recognition of customary marriage. On one hand, it provides for (i) the registration of customary marriages, (ii) recognizes the role of customary authorities, (iii) identifies the importance of the payment of dowry,[liii] (iv)permits polygamy. It can be observed that (ii),(iii) and (iv) aforementioned rather gives a customary flavour to civil marriage than recognizing it. Beyond these, it is only the registration of customary marriage enshrined in section 80(1) of the CSRO that can make one belief that such a marriage exist in Cameroon.

On the other hand, customary marriage is a dying or even a dead institution in Cameroon. First, customary dowry which is a fundamental element in customary marriage is not a requirement in the celebration of a valid marriage under the CSRO (section 70). Second, the 'duality test' provided in section 27(2) of the Southern Cameroon High Court Law 1955 devalues customary marriage. The CSRO, imposes requirements for a valid marriage. So, any marriage celebrated according to the customs and traditions of a particular native group which is inconsistent with the requirements provided in the CSRO or repugnant to natural justice, equity and good conscience is null and void. In *David Tchakokam v. Keou Magdaleine*[liv] it was stated that "any custom which says that a woman or any 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."

Also, the High Court consolidates jurisdiction in marriage and divorce matters. Customary courts no longer have competence over marriages celebrated according to native laws and customs by a civil status registrar. In *Mburu Stephen v. Mbiekwi Grace Tabah*, the Court of

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Appeal of the North West Region stated that a marriage celebrated by a Civil Status Registrar, 'whether it is monogamous or polygamous, is not a customary marriage'.

Reforms are needed for the effective recognition of customary marriages in Cameroon. A statute should be adopted akin to the Recognition of Customary Marriages Act 120 of 1998 South Africa. The statute should not be rigid in content in a way that deprives customary law its true nature which is unwritten. A minimum unification of fundamental customs of the various ethnic groups in the celebration of marriage will refined rather than devalue customary marriages. For example, required age, limit of bride price, consent, prohibited decrees of consanguinity and affinity, the procedure (formalities) for the registration of customary marriages. The statute should as well bestow on the customary court the exclusive jurisdiction over customary marriages including divorce or better still the Law on Judicial Organisation 2006 be amended to allow customary courts to hear divorce arising from customary marriages. As a follow up, the customary divisions of the appellate courts in Cameroon hearing divorce petitions should be restructured to reflect a customary composition. For example, the panel hearing appeals from a marriage contracted according the customs of the 'Oroko people' should include an assessor from the said tribe.

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Endnotes

[i]J., Horn and V., Rensburg, "Practical Implications of the Recognition of Customary Marriages" (2002) Vol..27(1) *Journal for Juridical Science,*p.55.
[ii] *Sowa v. Sowa* (1961) 1 All ER 687 C.A).
[iii]Suit N0.HCB/2/76 –Unreported.
[iv] This definition is contrary to that given by Lord Penzance James Wilde in the case of *Hyde v. Hyde & Woodmansee* (1866) L.R. IP &D 130. He describes marriage thus: "I conceive that marriage, as understood in Christendom, may be defined as the voluntary union for life of one man and one woman to the exclusion of all others." This is the definition of marriage in Christendom.
[v] SLR Vol.5 (2016).
[vi] E., Acha-Morfaw, The Complexities and Inequalities of the Laws of Divorce in Cameroon and How these Can be Overcome (PhD Thesis, University College London, 2018) p.130, available at https://discovery.ucl.ac.uk/id/eprint/10063780/1/Ghogomu-D_thesis.pdf, visited, 22/09/2023.
[vii] (1962), Case no.B/229/62 cited in A., Enemali, *The Formal Requirements of the Celebration of Marriage: A Comparative Study of Canon Law, Nigeria Statutory Law and Nigeria Customary Law*, (Trafford Publishing, 2013) p.39.
[viii] Suit no. GBB/32A/1981, (unreported).
[ix] In the Gumede case, the Court opined that in our pre-colonial past, customary marriage was always a bond between families and not individual spouses. Furthermore, the basic formalities which lead to a customary marriage are:[ix] (a) The two parties man and woman have agreed to marry each other; (b) A letter is sent to the woman's family and/or emissaries are sent by the man's family to the woman's family to indicate interest in the possible marriage; (c) A date is set for a meeting of the parties' relatives will be convened where lobolo is negotiated and the negotiated lobolo or part thereof is handed over to the woman's family and the two families will then agree on the formalities;(d) However, in the Zulu culture there are other pre-marital ceremonies like Umabo and Umembeso that takes place before the actual wedding;(e) After those pre-marital ceremonies, a date for the wedding is set on which the woman will then be handed over to the man's family which handing over may include but not necessarily be accompanied by celebration.
[x] Mikano observes that customary law is not explicitly recognized in the Constitution of Cameroon. He notes: "the closest provision to an unambiguous endorsement of customary law is article 1(2) which authorises the State:„… [to] recognize and protect traditional values that conform to democratic principles, human rights and the law….‟. E., Mikano, "Advocacy for Customary Justice Reform in Cameroon: What is to be Done With Customary Law?", (2021) Vol.18(3) *LWATI: A Journal of Contemporary Research*, p.100. Customary law has constitutional foundation in other jurisdictions. Ethiopia Constitution recognizes customary marriages and allows customary law to be applied in adjudication of disputes relating to personal and family law. Constitution of the Federal Democratic Republic of Ethiopia 1995 art 34(4),(5).
[xi]Black's Law Dictionary defines customary law as "customs that are accepted as legal requirements or obligatory rules of conduct, practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they are laws."
[xii] The requirements are: The rule must not be repugnant to natural justice, equity and good conscience; the rule must not be incompatible either directly or by implication with any law for the time being in force; the rule must not be contrary to public policy.
[xiii]E., Mikano, "The Repugnancy and Incompatibility Tests and Customary Law in Anglophone Cameroon" (2015*)* Vol.15, Issue 2*African Studies Quarterly,*p.86.
[xiv] Registration of customary marriage is obligatory. In fact it is a crime not to register it. Section 4(1) of the 1981 Civil Status Registration Ordinance states: "every Cameroonian residing in Cameroon shall, under pain of the penalties provided for in Section 370 of the Penal Code, be bound to declare to the competent civil status registration of his area any births, deaths, and marriages concerning him and taking place or celebrated in Cameroon. It can be deciphered from this provision that parties that have fulfilled marriage rites according to their customs and traditions (what is referred to as "traditional marriage")and are living as husband and wife are not married in the eyes of the law and the cannot claim rights accruing from marriage. In *Egoh Joseph v. Bih Comfort* CASWP/cc/08/02-03 Unreported, the man paid the dowry and fulfilled the requirements of the native laws and customs for a valid customary marriage.The South West Court of Appeal held that there was no marriage in existence to hear as the parties did not register the marriage as mandated by the CSRO.

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[xv] Section 81(2) CSRO.
[xvi] Section 64(4) CSRO.
[xvii] See *John Tantang v. Tarh Clarah Nkwanyuo* Case No:77/96-97, Unreported. See also *Kemgue v. Kemgue* (Suit no HCB/16MC/83) Unreported where Njamsi J., stated: "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….". It can therefore be said that if it is mentioned in the marriage certificate that the marriage is 'under native law', then the marriage becomes customary marriage.
[xviii] Section 58(c) and (d) of the CSRO. Bigamy is a criminal offence contrary to section 359 of the Cameroon Penal Code.
[xix] Section 58 of the CSRO states: " Within the period provided for in the Article 53 above, any person who has a legitimate interest may object to the celebration of a marriage, in particular: - the father, mother, guardian for spouses-to-be who are minors:- a customary authority, particularly in case of customary incest; - the husband of a woman who is committed by the bonds of an undisclosed previous marriage; - The wife of a man who is committed by the bonds of an undisclosed previous monogamous marriage".
[xx] Section 52(4) of the CSRO. Such consent shall be personally given by the spouses-to-be, to the civil status registrar at the time of the marriage (Section 64 (1)).The consent of minors shall be valid only when supported by that of the father and mother in the case of legitimate children (Section 64(2)). In the case of illegitimate children, such consent shall be given by one of the parents with respect to whom the affiliation has been established. This holds same for cases of death or the absence of one of the parents (Section 64 (3) (a) & (b)).
[xxi] Section 7 (1)(New) of Law N° 2011 of 6th May 2011 to amend and supplement certain provisions of CSRO provides: "Government delegates to city councils and their assistants, mayors and their assistants, heads of diplomatic or consular missions as diplomats deputizing shall be civil status registrars."
[xxii] Upon the receipt of such a declaration, the civil status registrar shall immediately proceed to publish it by posting on the notice board of the said registry followed by a forwarding of such publication to the civil status registry of the place of birth of the spouses as well as of their last residence. (Section 54 (1) to (4) of the CSRO.
[xxiii] Two adult witnesses are also required to be present (Section 69 *et seq* CSRO).
[xxiv] W., Golding, "(Mis)recognition of Customary Marriages: A Comparative Analysis of Canadian and South African Family Law Analysis of Canadian and South African Family Law", Vol. 34, (2022) *68 Canadian Journal of Family Law,* 2022, p.72.
[xxv] *Ibid.*
[xxvi] In *The Estate of Agboruja* (1949) 19 N.L.R. 38, the reason given for it was explained that the basis of the custom was to ensure the continued maintenance of the widow and her children and was not repugnant as contended by the widow; unless it could be shown that the new husband was wicked towards that family when the deceased was still alive. The male relative becomes a new father for the children and is responsible for their upbringing as if they were his own children.
[xxvii] 1999 G.L.R. 111.
[xxviii] *Ibid*, 118.
[xxix] Section 81(1) CSRO. Section 81(2) however states that "the President of the Republic may, by decree prohibit the celebration of customary marriages on all or part of the territory.
[xxx] These rules were effected by Gazette Notice Number 5345 issued on the 9th June 2017. The Gazette Notice required that all customary marriages be registered from the 1st of August 2017. There are two sets of customary marriages i.e. existing customary marriages conducted before 1st August 2017 and new customary marriages conducted after 1st August 2017.Registration of Customary Marriages in Kenya, available at http://aip-advocates.com/wp-content/ uploads/ 2017/10/ Registration-of-Customary-Marriages-in-Kenya.pdf, visited,04/09/2023.
[xxxi] However the receiver of dowry is bound by it. See section 71 of the CSRO.
[xxxii] J., Nzalie, The Structure of Succession Law in Cameroon: Finding A Balance Between the Needs and Interests of Different Family Members, (PhD Thesis, University of Birmingham, 2008) p.197.
[xxxiii] L., Jahan, "Dowry and its presence in English Literature: A critical study" (2017) Vol.37*Journal of Literature, Languages and Linguistics*, p.54.
[xxxiv] *Ibid.*
[xxxv] Section 2 Limitation of Dowry Law, Eastern Region Law No. 23 of 1956, now Cap 76 Laws of Eastern Nigeria 1963.
[xxxvi] J., Nzalie, *op cit*., p.202.
[xxxvii] J., Boulard, "Bride Price and the State of Marriage in North-West Ghana", (2018) Vol. 6, No. 9, *International Journal of Social Science Studies*, p.34.
[xxxviii] All FWLR Part 654(2012).

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[xxxix] (1977) IANSLR 138.
[xl] (1949) 19 N.L.R. 38.
[xli] By virtue of Section 3(new} of this law, the judicial organization of Cameroon comprises of the following courts: the Supreme Court, the Court of Appeal, the Special Criminal Court, Lower Courts for Administrative Litigation, Lower Audit Courts, Military Courts, High Courts, Courts of First Instance and Customary Courts. Courts in Cameroon can be grouped into Courts of original jurisdiction and Appellate Courts, Customary courts.
[xlii] S., Mukete, *Introduction to Law and Fundamental Rights in Cameroon: A Broad Perspective*, (Lambert Academic Publishing, Germany, 2022), p.36.
[xliii] Southern Cameroons High Court Law 1955 applicable in Anglophone Cameroon is in accordance with this assertion. Section 9(1) (b) states that: "The High Court shall not exercise original jurisdiction in any suit or matter which… is subject to the jurisdiction of the Native Court relating to marriage, family status, guardianship of children, inheritance or the disposition of property on death".
[xliv] See section 18(1)(b)(new) of the Law on Judicial Organisation 2006 as amended in 2011.
[xlv] This is true because the 1969 law on Judicial Organization and Procedure of Traditional Courts in East Cameroon and the Southern Cameroon High Court Law 1955 that gives the customary court competence over customary marriages are still applicable. While section 9(1) (b) Southern Cameroons High Court Law 1955 states that "the High Court shall not exercise original jurisdiction in any suit or matter which… is subject to the jurisdiction of the Native Court relating to marriage, family status, guardianship of children, inheritance or the disposition of property on death", section 18(1)(b)(new) of the Law on Judicial Organisation 2006 as amended in 2011 contradicts this position by vesting powers on the High Court over divorce proceedings in marriages in general including customary marriages.
[xlvi] (CASWP/50/83) Unreported.
[xlvii] (1998)1 CCLR p.53.
[xlviii] The reasoning of the Court in this case is however problematic owing to the fact that polygamous marriages are civil marriages in the eyes of the CSRO. Civil marriage can either be polygamous or monogamous.
[xlix] (Suit no HCF/0039/MC/08) Unreported.
[l] SLR Vol.5 (2016).
[li] (Suit no CANWR/9/2012) Unreported.
[lii] SLR Vol.7 (2017).
[liii] See section 71(1) and 73 of the CSRO.
[liv] 1999 G.L.R. 111.

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