



THE SUBSTANTIAL AMBIGUITY OF THE LEGAL DISCOURSE ON GENDER EQUALITY IN CAMEROON

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ABSTRACT

This study examines the issue of gender equality in Cameroon. It highlights the substantial ambiguity of the legal discourse on gender equality in Cameroon, which is founded on a normative assertion of legal equality between men and women, yet is often contradicted by discriminatory legal norms and practices to the detriment of women. The study adopts the doctrinal cum sociological positivism as its research methodology. This approach is particularly suited to legal study as it enables the examination of law beyond its formal expression. The findings indicate that the solemnity and firmness of the constitutional affirmation of the principle of gender equality contrast with the limited and inconsistent application of non-discrimination between men and women across the various branches of Cameroonian law. The study recommends the principle of non-discrimination should be effectively translated into practice through its implementation in laws and regulations. The legislature should refrain from enacting discriminatory laws, just as the administration should avoid adopting discriminatory measures against women. The judiciary, whether constitutional, administrative, or ordinary courts, should ensure compliance with this principle.

KEYWORDS: *legal, equality, sex, gender, ambiguity, discriminations.*

INTRODUCTION

Gender issues are among the most controversial. They carry a heavy emotional charge that rarely spares the researcher. The legal analysis of gender equality is no exception. How, indeed, can one escape the suspicion that hangs over the scientist?

This is because the “scholar” becomes synonymous with the feminist activist¹, when he does not simply become the defender of a reactionary “phallocracy”; and even the silence of science is interpreted as a legitimization of male domination². Where can one find the necessary distance? How can we navigate these multiple pitfalls to restore to gender analysis, beyond the impassioned discourses of various parties on real or supposed ontological equality or inequality, domination, subjugation, or submission; whether violent, malignant, or insidious; the element of objectivity and scientific rigor so often relegated to the background?

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¹ I. AYESLA, A. MAMA, F. SOW, *Engendering African social sciences*, (Dakar, CODESRIA, 1997); I. AYESLA, dir., ‘Gender revisited’ [1997] vol. XXII, *Africa Development*, (special issue, Dakar).

² Pierre BOURDIEU, *Masculine domination*, (Paris, Seuil, 1998, PARPART and Staudt, 1989).



The question is serious. It deserves that we dwell on some preliminary methodological considerations, particularly regarding the legal approach to gender relations, and more specifically, the question of gender equality in Cameroon. The law of sex, did we say? And why not the law of “gender,” to indulge in a current trend? Behind this undeniably provocative title lies the desire to highlight the ambiguity of the language surrounding this “*delicate*” issue. While the term “sex” seems to be preferred by legal scholars, the concept of “gender” has witnessed tremendous growth in recent years, both in the writings of sociologists and in political discourse. Legal scholars, attentive to current events, cannot ignore the social implications of this preference. Gender, as it is currently understood, is a product in the making³. It is therefore crucial to clarify some semantic points to ensure the clarity of the discussion that will follow, particularly regarding the concepts of sex and gender.

While sex primarily refers to the biological components of the sexual division of the human species, gender concerns the cultural elements of this distinction⁴. It can be very simply defined as socialized sex, that is, sex as socially constructed⁵. On the one hand, because these two notions do not necessarily correspond: an individual of a given sex may behave more or less differently from the roles culturally assigned by the dominant values of a society to the gender to which they belong, as is the case with homosexuals whose union, including in the form of marriage, is enshrined in certain legislation, or even in the process of being institutionalized in several societies⁶. On the other hand, the question remains regarding the existing relationships between natural and cultural factors: are there natural foundations for the division between genders, or must this division be explained solely by social, political, and historical factors? This question is of particular interest to legal scholars since it lies at the heart of the movement denouncing “*legislative rationale*”⁷ by Anglo-Saxon feminist movements in particular⁸. The starting idea is based on a distinction between women and men from the dual point of view of sex (of a biological order) and gender (the existence of a feminine culture and a worldview based on a feeling of unity between human beings and nature, the search for harmony, empiricism, the appreciation of negotiation and transaction, as opposed to the formulation of abstract and interpersonal categories supported by the principle of authority, which is characteristic of the masculine worldview).

This assumption does not seem to resonate with Francophone feminists, who, like Elisabeth BADINTER, are largely in favour of a cultural identity between the sexes. In any case, North American feminists maintain that the feminine worldview has been systematically disqualified throughout history by means of legislation that stems from an essentially masculine perspective, an expression of “*masculine reason*” under the guise of universal reason. They argue that the language

³ Pacôme VOUFFO, ‘The legal promotion of gender in Cameroon’ [2021], 127 *Juridis Périodique*, 113

⁴ Leopold DONFACK SOKENG, ‘The sex of law in Cameroon: about legal equality between women and men [2009] *Cahiers Juridiques et Politiques*, 172.

⁵ I. JACQUET, *Male/female development. Gender, tool of a new concept*, (L’Harmattan, Paris, 1995).

⁶ Cases of the United Kingdom, France, Netherlands, USA, South Africa.

⁷ N. ROULAND, *Historical introduction to law*, (PUF, Paris, 1998).

⁸ *ibid.*



of law, institutions, and power is largely gendered, to the benefit of the male gender. Hence the need to restore gender equality in society, particularly through the urgent solutions of legal quotas and the requirement of parity⁹. Moreover, scientific representations still bear the mark of a certain male dominance¹⁰. Within grammar, male pre-eminence is evident, notably with the masculine form prevailing over the feminine when it comes to agreement in gender and number. Job titles are masculinized, even if they are gradually being adapted to the feminine gender¹¹. Legal linguistics also bears the mark. The phenomenon is just as real, with formulas referring to a generic masculine. There seems not to be a “*generic feminine*”. There is a kind of “*sexism in legal language*” that is accepted and experienced¹². Can the expression “*human rights*,” for example, *mutatis mutandis* refer to the expression “*women’s rights*”?¹³ It does not seem so. Certainly, the man of “*human rights*” represents the human species in its gender duality; but by substituting the word “*woman*” for the word “*man*”, the reality is quite different; “*women’s rights*” generally fall under what legal doctrine calls categorical rights¹⁴. Such scientific realities, however, do not influence the evolution of ideas and the law on the question of gender. Perceptions of gender are undergoing a clear evolution, the concept acquiring connotations far beyond its literal expression.

For the time being, it is necessary to take a step back from these anthropological, even ideological, disputes; without, however, ignoring them given their legal implications, and to focus this reflection on gender equality on positive law, in order to avoid the conflation and other speculative excesses that often accompany discourses on gender. However, to avoid falling into the other pitfall of the narrow formalism of a simple, albeit unavoidable, legal exegesis, would it not be appropriate to revisit the legal issue of gender equality in Cameroon in light of emerging postmodern law and sociological positivism?

The analysis should be conducted using the approach of sociological positivism. This is a prime example of an approach to legal studies, allowing us to address law far beyond its formal expression. In the field of human rights, it is particularly characteristic, as it enables us to assess the practical grounding of established law and its relevance to society. It is indeed the application of law that allows us to measure its effectiveness. We must therefore move beyond the formal expression of law to its practical application¹⁵.

Taking into account recent developments in what some call a “*post-modern society*” and the law that accompanies it undoubtedly necessitates a new approach to the question of gender.

⁹ Leopold (n 4).

¹⁰ Pacôme (n 3).

¹¹ M.LESSARD and S. ZACCOUR, ‘What kind of rights? Autopsy of sexism in legal language (2007) (47) *Revue de Droit de l’Université de Sherbrooke*, 255.

¹² *ibid*

¹³ *ibid*

¹⁴ *ibid*.

¹⁵ Pacôme (n 3).



Transcending classical legal schools,¹⁶ it recommends moving beyond a legal positivism that is now too narrow—because it is conceived on the scale of the nation-state with its irrefutable sovereignty—and revisiting national normative production concerning gender relations in light of the universalist theory that underpins and informs human rights today¹⁷. Indeed, by elevating humankind to the pantheon of deities populating the universe of international law, where it reigns alongside the now less sacred sovereignty, postmodernism effectively introduces a sometimes conflictual relationship of coexistence at the heart of the legal framework (human person versus sovereignty, human rights versus state rights)¹⁸. The globalization of law, another characteristic element of postmodernism, offers very interesting heuristic perspectives since it now allows us to think about solutions in universal terms to individual or collective problems long considered to fall under the exclusive jurisdiction of states¹⁹.

Human rights are the sanctuary of the definition of the human person, the vehicle for self-definition, for human emancipation. They “*constitute the modern attempt to introduce reason into the world*”²⁰. The reconsideration of the condition of women today could claim to be based on this vision. In the recent past, the condition of women seemed to border on subjugation under the guise of a gendered conception, due to the dichotomy of man/woman; or rather, the sexed approach centered on male and female, reserving for women a residual place. In Cameroon, this phallocracy persists, heavily reinforced by customs and traditions. Professor Siméon Patrice KOUAM reports in this regard that these “*still convey today the idea that man is the strongest, physically, economically, intellectually; (...). Woman must remain at home (...), she has no place in the public sphere (...).*” Children’s education is thus shaped by these myths to such an extent that it becomes difficult for them, once they reach adulthood, to consider becoming involved in the political sphere²¹. But, gradually, the law seems to be moving away from this conception of the relationship between the two components of gender. From now on, it observes, establishes, and operationalizes gender by taking into account the progressive evolution of behaviours²².

It will therefore be necessary to analyse and reinterpret this local normative production in relation to the universal principles that structure the legal analysis of gender and are the subject of international commitments by the Cameroonian State. From this perspective, recourse to theories of legal pluralism offers interesting insights. These theories posit the presence within society of a

¹⁶ Jacques CHEVALLIER, ‘The end of schools’, [1997] (3), *R.D.P.*, 687.

¹⁷ G. COHEN-JONATHAN (G.), ‘Universality and indivisibility of human rights’, in *The Universal Declaration of Human Rights 1948-1998. Future of a common ideal*. International conference on September 14, 15 and 16 (1998), (La Sorbonne, Paris, Ronéo).

¹⁸ Leopold (n 4).

¹⁹ R.J. DUPUY ‘The splitting of the world’ (1997) *RGDIP*, 321.

²⁰ A. CASSESE ‘The current value of human rights’, in *Humanity and international law*, Mixtures René-Jean DUPUY, (Paris, A. Pedone, 1991) 67.

²¹ Siméon Patrice KOUAM, ‘Understanding the legal and historical foundations of gender equality and women’s political participation’, in Justice DIFFO TCHUNKAM (dir.), *Gender, leadership and political participation in Cameroon (1931-2013). Cameroon on the path to parity*, (1st edition, Colorix, 2014) 107.

²² Pacôme (n 3).



plurality of legal systems in complementary or conflicting interactions, and therefore, taking this into account allows for a better understanding of the social regulation carried out by the law²³. Based on these methodological considerations, it would be particularly interesting to examine the substantial ambiguity of the discourse on gender equality in Cameroon. This discourse is built upon an axiomatic and normative statement of legal equality between men and women, a statement frequently contradicted by discriminatory legal norms and practices that disadvantage women, and whose effectiveness can only raise questions: Is Cameroonian positive law an instrument for legitimizing male domination? This question certainly deserves careful consideration, and only a meticulous examination of the legal norms in force would allow us to judge. However, such an approach would leave a sense of incompleteness if it were not complemented by the exploration, or at least the mapping, of new avenues for the genuine equalization of the rights of women and men in Cameroon.

Thus, we intend to verify throughout the following developments that the solemnity and firmness of the constitutional affirmation of the principle of gender equality contrasts with the relativity of the application of non-discrimination between men and women in the various branches of Cameroonian law. The legal discourse on gender in Cameroon is ambiguous in more ways than one. Beyond the substantial ambiguity of the norms, which sometimes refer to “*modern law*” and sometimes to “*traditional laws*”, drawing indiscriminately from the sources of international law, fundamental rights, the former Napoleonic Code and Common Law, French and English law, or even “*ancestral customs*” and Islamic law, it seems appropriate to highlight the fundamentally dual nature of the discourse, which is both seductive and deceptive. It seduces by the solemnity, consistency, and firmness of the affirmation of gender equality (I); but this constitutional assertion is misleading in many respects, particularly given the relative nature of the implementation of this fundamental principle across the various areas covered by Cameroonian positive law (II). This substantial ambiguity in the legal discourse on sex is in reality a reflection of a Cameroonian society in transition, torn between an old order based on entrenched macho traditions on the one hand, and the demands of the changing world on the other, particularly those articulated around the ideal of guaranteeing fundamental rights and the imperatives of globalization.

I-A solemn and constant affirmation of gender equality

In the beginning was equality among all human beings, particularly between men and women: equality in rights and duties because both enjoy equal and the same dignity. This postulate, which is the principle behind the construction of interpersonal relationships, especially since the Enlightenment, certainly appears as one of the constants of Cameroonian constitutionalism, as it is enshrined in the preface of all the Constitutions adopted by the State of Cameroon. The 1996

²³ N. ROULAND, ‘Legal pluralism’, in A-J ARNAUD, dir., *Encyclopedic dictionary of theory and sociology of law*, (LGDJ, Paris, 1993), 494.



constitutional reform was, from this perspective, a moment of consolidation of this principle, thanks in particular to the wave of liberalism that swept across the African continent and the ideal of human rights that it conveyed²⁴. As we can see, the Cameroonian domestic legal order is not entirely devoid of useful provisions on gender equality, whether in the Fundamental Law or in sub-constitutional texts.

A- The consistency and solemnity of the constitutional affirmation

Constitutional dynamics in Cameroon demonstrate consistency and solemnity regarding the promotion of gender equality in the various preambles to the Constitution²⁵. The principle of gender equality thus features prominently in successive Cameroonian Constitutions. The almost ritualistic formula, solemnly enshrined in the Preamble to the Fundamental Laws of March 4, 1960, June 2, 1972, and January 18, 1996, states:

“The Cameroonian people, (...) proclaim that every human being, without distinction of race, religion, sex, or belief, possesses inalienable and sacred rights.”

This ongoing tension between the abstract principle of legal equality and the concrete expression of non-discrimination²⁶ is condensed in the aforementioned constitutional references. These are supplemented by Article 16 of the 1948 Universal Declaration of Human Rights, which, although not expressly reproduced, must be considered an integral part of the Cameroonian Constitution. This article states, in particular, in paragraphs 1 and 2:

“1. Men and women of full age, without any restriction as to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.”

Drawing on the lessons of history and aware that simply stating principles is insufficient to guarantee effective equality in society, the Cameroonian constituent power no longer limits itself to the solemn proclamation of equality and non-discrimination. It now intends to ensure their effectiveness through the formulation of related guarantees.

B- The gradual strengthening of the principle of gender equality

The question of the legal value of the preamble to the constitution and the principles it contains has long been a subject of controversy. Faced with the vacillations of judges, legal scholars have remained divided, doubtful, and even reserved regarding the affirmation of the constitutional value

²⁴ G. Gerard CONAC, *Democratic transitions in Africa* (Paris, Economica 1993).

²⁵ Leopold (n 4).

²⁶ Emile DECAUX, ‘Non-discrimination’ *Commentary on article 2 of the Universal Declaration of Human Rights*, in *Le monde* (1995).



of the Preamble to the Declaration of Rights and Freedoms, as well as the fundamental principles it sets forth²⁷. But this certainty does not appear to have undermined the constitutionality of the principle of gender equality, since the Supreme Court of Cameroon, in a decision of February 22, 1963, breaking with its usual reserve, confirmed it in the strongest possible terms:

“Whereas the rights of the person resulting from marriage, paternity, and filiation, the inalienable and sacred nature of which is proclaimed in the preamble by the Constitution, cannot be the subject of a transaction, nor constitute the consideration for a debt or a claim; whereas these principles are a matter of public policy; whereas the custom invoked, insofar as it establishes discrimination based on sex, runs counter to the constitutional principle of gender equality (...).”

Whether by design or not, it was ultimately the constituent power itself that, at the end of the 1996 constitutional reform, definitively removed the uncertainty surrounding the constitutionality of the liberal principles set forth in the preamble by stipulating in Article 65 of the new constitutional text that *“the preamble is an integral part of the Constitution”*²⁸. The effectiveness and constitutional value of the principles of gender equality and non-discrimination between men and women are thereby irrevocably established, since the Constitutional Court or any other judge can invoke them to sanction any violation of these fundamental standards.

II- The relativity of the application of the principle of non-discrimination between Men and women in the various branches of Cameroonian law

The legal anchoring of gender equality in Cameroonian law remains a reality. Analysis of the various norms reveals that gender equality is a principle generally observed in the various branches of Cameroonian law (A), with the notable exception of family law and law of persons, in which numerous discriminatory provisions prevail to the detriment of women (B).

A- A Principle Generally Observed

A brief examination of Cameroonian legislation in various areas of social activity confirms this assertion. This is also true of women's participation in the management of public affairs. Indeed, the electorate, understood as *“the right of the citizen to participate by casting their personal vote in the operations by which the electorate appoints authorities”*²⁹, is equally recognized for persons of both sexes without any discrimination.

²⁷ E. BOEHER, 'Observations under CFJ/CAY, MOUELLE KOULA Eitel v/Federal Republic of Cameroon and CFJ/CAY, NANA TCHANA Daniel v/Federal Republic of Cameroon' (1973,) (3) RCD, .54

²⁸ Maurice KAMTO 'Constitutional revision or rewriting of a new constitution' [1996] 23/24 Lex Lata; Leopold DONFACK SOKENG 'The ambiguities of the constitutional revision of January 18, 1996 in Cameroon', in *The constitutional reform of January 18, 1996 in Cameroon. Legal and political aspects*, (AAPS/Friedrich Ebert Foundation, Yaoundé) 1996; Adolphe MINKOA SHE 'The constitution of January 18, 1996 and the guarantee of the right to be different' Joint La Francophonie/Commonwealth seminar on the theme "Democracy and plural societies", (Yaoundé, January 24-26, 2000).

²⁹ Raymond CARRE de MALBERG, *Contribution to the general theory of the State*, (2 volumes 1920-1922,) 411



A clear illustration of this is certainly Law No. 2012/005 of April 25, 2019, amending and supplementing certain provisions of Law No. 2012/001 of April 19, 2012, concerning the Electoral Code, whose non-discriminatory nature is unequivocal:

“Any person of Cameroonian nationality or naturalized citizen is eligible to vote, without distinction of sex, provided they have reached the age of twenty and are not subject to a legal incapacity”.

With regard to list voting, the Electoral Code crystallizes the requirement to promote women’s representation in the political sphere. No election is exempted, in principle, from this requirement to consider gender in the composition of candidate lists; this applies to senatorial elections (Article 218), regional elections (Article 246), and municipal elections (Article 171).

During the 2013 legislative elections, both the Electoral Council and the electoral judge had the opportunity to rule on the substantive nature of this gender requirement, invalidating approximately twenty lists for this reason. The Electoral Council reinforced its position during the 2013 senatorial elections, invalidating several lists in the Far North region for the same reason. The Supreme Court, acting at that time as the constitutional court and therefore the court of national elections, ruled in its favour in the pre-electoral dispute³⁰.

Under the current electoral law, it should be noted that the number of women in our representative bodies has seen a slight increase. Their representation, or rather their representativeness, is now a visible reality, although it does not always meet the parity standards promoted by law.

It goes without saying that none of the aforementioned incapacities are based on sex. This non-discriminatory definition of electoral capacity generally applies to all public elections held in Cameroon³¹. The same applies to eligibility for public office, including the presidency, which is open to individuals of both sexes under the same conditions.

Institutionally, the dynamics of Cameroonian institutions are marked by the creation in 1984, within the government structure, of a Ministry for the Status of Women, which was restructured twenty years later into the Ministry for the Promotion of Women and the Family, tasked among other things, with promoting moral values that respect women’s rights³².

However, the realization of this gender equality at the political level remains problematic, given the low representation of women in political bodies. Is this due to a lack of enthusiasm for politics, or do they face *de facto* obstacles that contribute to the dyad of male domination/female subjugation? The truth lies in both hypotheses. The explanation offered by Madame FRAISSE

³⁰ Pacôme VOUFFO (n 3).

³¹ By comparison, it should be noted that this equality is hardly achieved by Algerian electoral law, which notably discriminates against the political majority of men and women: 19 years for the former and 21 years for the latter.

³² Ibrahim MOUICHE, *The modern African state and public patriarchy*, (Dakar, Codesria, 2007) 154.



seems illuminating on the matter: “Women,” she writes, “have obviously never declared themselves outside the scope of human rights. But reading moralists and jurists of the last century and the first half of this century, it is clear that women are denied the capacity to be identical to men, that is to say, similar at the highest level of what a rational being can desire, namely, the governance of self and others”³³. Hence the importance of the current debate on the most appropriate means to promote women’s equal participation in public life: recourse to gender parity, the establishment of quotas by sex, or simple legal incentives aimed at “equality in mandates and functions” (parity as an objective), as the French constituent power did in 1999?

With regard to Cameroon, one might be inclined to think that advocates for women’s rights are not fully utilizing the legal instruments at their disposal. How can we understand, indeed, that these individuals have not yet obtained respect for—or at least raised the issue with the courts—a more equitable representation of both sexes in the composition of candidate lists for municipal or legislative elections, even though the law allows for this by stipulating that the composition of candidate lists for multi-member elections must take into account the “sociological makeup” of the constituency³⁴. Similarly, Article 57 of the Constitution states in paragraph 2 that:

“The Regional Council must reflect the diverse sociological makeup of the region”.

These provisions have thus far served as the basis for ethnically motivated demands³⁵. Are women not a “sociological makeup”—perhaps even the most significant in terms of numbers—of the constituency? In the absence of a clear definition of this concept, one could argue that it is a catch-all category that could include, among other things, the “gender” component...

Moreover, the Cameroonian constitution bases its ambition to protect women on the fundamental texts of the UN human rights framework, some provisions of which, such as Article 4 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women, legitimize the use of affirmative action to achieve gender equality in society. The constitution also draws upon the provisions of the 1981 African Charter on Human and Peoples’ Rights, to which it expressly refers, particularly Articles 2 and 9 of the Maputo Protocol. Therefore, there is no obstacle to extending the quota system, which is in place in Cameroon for the representation of ethno-regional groups in public life, to women’s access to mandates and political functions.

Indeed, the underrepresentation of this “gender” within the administrative system would be suspicious. While women constitute 51% of the country’s total population, they remain significantly underrepresented in the political and administrative apparatus, particularly in the

³³ G. FRAISSE, ‘Register women’s rights, clarify men’s rights’, in *The Universal Declaration of Human Rights, 1948-1958. Future of a common ideal*. International conference on September 14, 15 and 16, 1998, (La Sorbonne, Paris, Ronéo).

³⁴ Art.151 of law no. 2012/001 of 19 April 2012 on electoral code amended and supplemented by law no. 2019/005 of 25 April 2019.

³⁵ Leopold DONFACK SOKENG (2001); ‘Ngoh Adong Dogdima case on the disqualification of the list of SDF candidates for non-respect of the sociological components of the Bali constituency during the municipal elections.



highest state positions: there are only 8 women out of approximately 63 members of the government or equivalent positions, representing about 12.7%³⁶. Similarly, there are only 3 women out of 30 managing directors of major semi-public companies, or 10%; while 7 women hold approximately 50 positions as secretaries-general in ministries, universities, or equivalent institutions, representing just over 7%. They constitute 31% of the deputies, i.e. 56 women out of 180 deputies composing the 2020-2025 legislature, 26% of the senators, i.e. 26 women out of 100 senators; 9.1% of the members of the Constitutional Council, i.e. 1 woman out of 11 constitutional judges and 4.4% of the members of the economic and social council since 2001; 3.6% of the Prefects, i.e. 2 women out of 56 Prefects; 4.2% of the sub-prefects, i.e. 15 women out of 360 Sub-Prefects and 8.3% of the mayors, i.e. 31 women out of 360 mayors for the 2020-2025 term³⁷.

As for the Cameroonian Labour Code, it consistently incorporates the constitutionally enshrined principle of equality in the employment relationship. Furthermore, it guarantees the right to equal pay for equal work, as affirmed by paragraph 2 of Article 23 of the 1948 Universal Declaration of Human Rights. This principle is applied in both the public and private sectors, subject in the latter case to respect for the principles of freedom of contract and free negotiation of wages between employer and employee, as promoted by Law No. 92/007 of August 14, 1992, which enacts the new Labour Code. And, in the absence of reliable statistics, there is little evidence to suggest that Cameroonian women are paid less than their male counterparts for equal work. Furthermore, women's protection is ensured in their reproductive and perpetuating role through the institutional recognition of paid maternity leave, the prohibition of dismissal for pregnancy, and other measures guaranteeing the safety of mothers by the legislature, whether within the framework of labour law itself or the specific law governing the civil service. The female civil servant who, according to Article 66 of the aforementioned 1994 General Code, is entitled to 14 weeks of maternity leave upon presentation of a pregnancy certificate, exemplifies a case of preferential treatment. The same applies to the situation of a pregnant woman who, according to the Labour Code, can terminate her employment contract without notice, but the employer cannot terminate her contract due to pregnancy (Articles 82 to 84).

B- The notorious exception of family law

An analysis of positive family law in Cameroon, as in many African states, reveals numerous distortions of the principles of equality and non-discrimination, generally to the detriment of women. These distortions diminish the scope of the aforementioned fine proclamations of rights, which are the subject of unequivocal international commitments. Hence the plight of thousands of women in Africa, who unfortunately cannot find in the legal practices of their respective states the refuge and security necessary for their development. This is particularly true of consent to marriage and, consequently, the issue of forced marriage.

³⁶ See Decree No. 2019/002 of January 4, 2019 concerning the reorganization of the government.

³⁷ Compilations UN Women.



Certainly, the validity of a marriage is subject, among other conditions, to the conscious, serious, free, and informed consent of persons of legal age (a minimum of fifteen years for women according to law³⁸, unless an exemption is granted by the Public Prosecutor); The scene is recurring, however: young girls humiliated, abused, forced to marry and live alongside elderly men in intolerable conditions, in contempt of human dignity. According to the World Bank, at least 20% of women worldwide are victims of physical violence or sexual assault, often at the hands of relatives. Rape within couples is still too often considered a private matter. In the European Union, only five countries have specific legislation on this issue: Germany, Finland, Ireland, Portugal, and the United Kingdom. France is hardly among them, although the Court of Cassation recognized the concept of marital rape in 1990. In India, more than 40% of women are brutalized, sometimes raped by their husbands, who are jealous or simply disappointed by a meal. For the less fortunate, fate is sealed: according to the Indian government, 6,929 women were burned alive in 1998 over dowry disputes, and the statistics have barely changed in recent decades. Women in developed countries, while not victims of such barbaric customs, are not immune to abuse. In France, the figures speak for themselves: at least two million women suffer some form of domestic violence, and 400 women, more than one a day, die from it each year. It is estimated that in the United States, four women are beaten every day and 700,000 are raped each year. Statistics concerning Africa are scarce due to a lack of sufficient data; but the situation is certainly no better. This phenomenon is not limited to disadvantaged communities: it affects women from all walks of life, without exception. Most assaults stem from a man's need to assert his authority, from alcohol-fuelled irritability, or from the unconscious repetition of a pattern of violence he experienced in his childhood.

The Cameroonian legislature, aware of this problem, intends to protect young girls—who are generally the victims—first by classifying violence as a vitiating factor of consent that invalidates marriage, and then by establishing criminal penalties for forced marriage under Article 356 of the Penal Code³⁹. However, the effectiveness of this protection is limited since physical or psychological violence is generally not inflicted during the marriage ceremony itself, but rather beforehand to extract the girl's consent, and then afterward to subject her to her new status. Moreover, the pressure exerted by the family environment, and in particular by the father, mother, brothers and sisters, is suffered and internalized by the young girl who can hardly break free from the family constraints to initiate criminal proceedings without suffering disapproval, or even banishment from society⁴⁰. Therefore, she generally complies out of fear of reprisals when she does not simply opt for the perilous and sometimes tragic solution of running away.

³⁸ From this point of view, Cameroonian law remains behind the Maputo Protocol, which sets the guaranteed minimum age of marriage for girls at 18 in its article 6 (b)

³⁹ Law No. 2016/007 of July 12, 2016, Constituting the Penal Code.

⁴⁰ A. BOUYA, 'Education of girls. What prospects for sub-Saharan Africa in the 21st century?' [1994] 4 *AFRICA DEVELOPMENT*, 34.



However, even the framework of a freely consented marriage does not guarantee respect for the principle of gender equality under Cameroonian law. The primary inequality lies in the institution of polygamy. It remains the default marital option according to Ordinance No. 81/02 of June 29, 1981, concerning the organization of civil status, and a marriage is considered polygamous unless the spouses have expressly declared the contrary intention, namely, the unequivocal choice of monogamous marriage. Polygamy in Cameroonian law refers solely to the situation of a man who can marry and establish a family with several women simultaneously; the reverse situation is prohibited and punished by Article 359 of the Penal Code under the classification of bigamy, the situation of an individual who is irregularly engaged in two marriages. The civil sanction is the absolute nullity of the second marriage. While a woman's bigamy is irrevocably established once she is already engaged in a prior marriage, a man's bigamy can only result from the existence of an undissolved monogamous marriage, as stipulated in Article 58 of Ordinance No. 81/02 of June 29, 1981.

An examination of the spouses' respective situations in non-patrimonial matters confirms the persistence of inequalities in rights and duties, a vestige of marital power whose most visible effect was the assertion of the married woman's legal incapacity. The prevailing principle is certainly that of equality in rights and duties between spouses; they owe each other fidelity, support, and assistance upon the end of their obligation to cohabit. However, the man's status as *pater familias* confers upon him a certain ascendancy under positive law, regardless of his intrinsic abilities or his contribution to the household. Thus, the residence is that chosen by the husband, to which the wife owes obedience and is required to bear his name. The right and freedom of a married woman to pursue an activity are subject to limitations under the relevant provisions of the Civil Code and Ordinance No. 81/02 of June 29, 1981, concerning the husband's power to oppose his wife's separate professional activity.

Similarly, Article 4 of the Commercial Code grants the husband the power to oppose his wife's commercial activity by simply notifying the clerk of the commercial court of his objection. Article 74, paragraph 2 of the Ordinance of June 29, 1981, specifies that the husband may oppose the exercise of such a profession in the interest of the household and the children. The law thus grants husbands extensive powers over their wives, making them the managers of the household's integrity. He alone has the authority to judge whether his wife or wives should engage in a separate business activity or profession. This objection may be raised before or after the commencement of said activity. However, the strength and scope of this power are somewhat mitigated by the fact that the wife can petition the judge of the court of first instance to lift her husband's objection. The judge must then rule within 10 days after hearing both parties. The sanctioning of the duty of fidelity is also emblematic of the discrimination perpetrated by the law to consolidate male dominance. In principle, the duty of fidelity is the obligation for spouses to maintain marital relations only with each other, to the exclusion of any third party.



While material infidelity is defined as any sexual relationship with someone other than one's spouse under Cameroonian law, adultery is considered a serious marital offense, punishable both civilly and criminally by law. Civilly, adultery is presented as a peremptory ground for divorce for both the wife and the husband. From this perspective, the Civil Code applies the principles of reciprocity and equal submission of spouses to the duty of fidelity. The same cannot be said of the Penal Code, which addresses the repression of adultery in Article 361. This article subjects both the wife and the husband to the same penalties of imprisonment (2 to 6 months) or a fine (25,000 to 100,000 FCFA). The former Penal Code discriminated based on gender, particularly in the classification of the act. Indeed, paragraph 2 of Article 361 of the former Penal Code stipulated that a man's adultery was only established if committed in the marital home and/or habitually with the same woman. The judge sometimes required that the act be committed in the marital bed. In reality, the aim was not to punish the man's adultery, but rather the offense of maintaining a concubine in the marital home; whereas a woman's adultery was irrevocably punished regardless of the location or frequency. The judge's severity in this case was noteworthy, as he sometimes considered that extreme familiarity, coupled with questionable promiscuity, constituted sufficient evidence to justify the charge of adultery against the wife.

This discrimination, among other things, legitimized the claim that Cameroonian family law is masculine in nature and should be perceived as an instrument for perpetuating male domination in gender relations. There is no need to mention here the judicial practice regarding domestic violence which, in the opinion of many Cameroonian judges and subject to the husband's abuse, is part of a pseudo "*right of correction*", an attribute of the *pater familias*! The real question then becomes: where is the threshold of tolerable violence in a marital relationship drawn? Isn't a well-aimed slap a poorly timed caress, enough to knock out a spouse's molar? Things have changed somewhat with the introduction of the new Penal Code⁴¹. However, one cannot claim to be exhaustive in examining the points of contention regarding the principle of gender equality in the field of family law. What, for example, can be said about this provision of the Civil Code according to which "*the husband alone administers the community property. He may sell, mortgage, and alienate it without the wife's consent*"? Divorce, the division of community property, filiation, inheritance—particularly with regard to the customary Islamic law practiced in the northern part of the country—are all points whose careful examination would undoubtedly reveal numerous indications confirming the relationship of domination/subjugation that the current law sometimes maintains in favour of men. Clearly, the full capacity and marital autonomy of women, like their capacity to enjoy full citizenship, still seem to be called into question; both are contested in the name of the power they can confer upon the individual within society.

⁴¹ Law No. 2016/007 of July 12, 2016, Constituting the Penal Code.



CONCLUSION

Several factors could prove decisive in the evolution of gender law towards the realization of equal rights for women and men in Cameroon. These can be summarized in three main points: the prevailing globalization, the universalization of human rights, and the enormous legal potential contained within the Cameroonian constitution. The constitutional requirement of gender equality and non-discrimination against women entails a dual legal obligation, both positive and negative. Positively, it involves enshrining these principles in practice through their implementation by laws and regulations. Negatively, the legislature cannot enact laws, nor can the administration take discriminatory measures against women. Judges, whether constitutional, administrative, or judicial, should ensure this. In reality, and it is important to conclude on this point, women and men cannot have identical social status because society rarely assigns them the same role. Naturally different from one another, they nevertheless enjoy the same rights because they share the same dignity as human beings. Equal yet different, they will always be shaped by different, albeit complementary, social trajectories. The important thing is that both men and women flourish equally for the well-being of the family, when they form one, and for the progress of society; no arbitrary discrimination should infringe upon or thwart legitimate ambitions. Moreover, genuine equality takes nothing away from anyone, since it also contributes to valuing the acquisition of skills based on talent and not on sex⁴².

This is undoubtedly what the draftsman of the 1979 Convention intended to emphasize when, while proclaiming women's fundamental right to genuine equality with men, they reiterated that "*the traditional role of men in the family and in society must evolve as much as that of women if we are to achieve true equality between men and women*". Ultimately, then, it is a matter of deploying a genuine social pedagogy⁴³.

⁴² Pacôme (n 3).

⁴³ Leopold (n 4).