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## **The Interplay Between Customary Law on Inheritance in Southern Cameroons and the Human Rights Principle of Gender Non-Discrimination**

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### **Abstract**

Cameroon's plural legal system combines colonial French and British models, municipal legislation, human rights principles, and customary law. This coexistence generates persistent tension, particularly between discriminatory inheritance customs and egalitarian human rights norms. Customary law in Southern Cameroons remains highly patriarchal, treating women as legal minors restricted to usufruct rights, thereby excluding them from contracting, acquiring, or disposing of property. Such practices undermine women's inheritance rights and perpetuate inequality. Ordinary courts attempt to curb these customs through the repugnancy and incompatibility tests under Section 27(1) of the Southern Cameroons High Court Law. Yet these measures have produced divergence rather than reform, as unofficial customary courts—widely relied upon in rural and poor urban areas—continue to enforce discriminatory norms. This article examines the interplay between customary inheritance law and the human rights principle of gender non-discrimination, urging proactive state intervention to dismantle stereotypes and translate egalitarian jurisprudence into lived reality.

### **Key words**

Women's rights; customary law; inheritance practices; property rights; legal pluralism; conflict of laws; gender non-discrimination; intersection of culture and rights; universal human rights norms

### **Resumen**

El sistema jurídico plural de Camerún combina los modelos coloniales francés y británico, la legislación municipal, los principios de derechos humanos y el derecho consuetudinario. Esta coexistencia genera una tensión persistente, especialmente entre

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las costumbres discriminatorias en materia de sucesión y las normas igualitarias de derechos humanos. El derecho consuetudinario en el sur de Camerún sigue siendo muy patriarcal, ya que trata a las mujeres como menores de edad con derechos de usufructo restringidos, lo que las excluye de la posibilidad de contratar, adquirir o enajenar bienes. Estas prácticas socavan los derechos de sucesión de las mujeres y perpetúan la desigualdad. Los tribunales ordinarios intentan frenar estas costumbres mediante las pruebas de repugnancia e incompatibilidad previstas en el artículo 27(1) de la Ley del Tribunal Superior del Sur de Camerún. Sin embargo, estas medidas han producido divergencias en lugar de reformas, ya que los tribunales consuetudinarios no oficiales, muy utilizados en las zonas rurales y urbanas pobres, siguen aplicando normas discriminatorias. En este artículo se examina la interacción entre el derecho consuetudinario de sucesión y el principio de derechos humanos de no discriminación por motivos de género, instando a una intervención proactiva del Estado para dismantelar los estereotipos y traducir la jurisprudencia igualitaria en una realidad vivida.

### Palabras clave

Derechos de la mujer; derecho consuetudinario; prácticas sucesorias; derechos de propiedad; pluralismo jurídico; conflicto de leyes; no discriminación por motivos de género; intersección entre cultura y derechos; normas universales de derechos humanos

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## 1. Introduction

The tension between customary inheritance law and the human rights principle of gender non-discrimination remains one of the most persistent and complex legal conflicts in Southern Cameroons. Inheritance practices in the region are deeply embedded in customary law, reflecting cultural traditions and community values. Yet these norms frequently privilege male heirs and marginalize women, placing them in direct conflict with constitutional guarantees and international human rights standards that enshrine gender equality (Ndulo 2001).

The repugnancy doctrine, inherited from colonial legal frameworks, has been used by courts to test the validity of customary rules, but its application has not always ensured substantive protection for women's rights (Kiye 2021). When statutory courts refuse to enforce customs that violate human rights norms, little or nothing is done to curb the continued observance of such practices within the community. This article explores the enduring conflict between customary inheritance law and the principle of gender non-discrimination. It contends that, despite incremental progress, the courts' reliance on the repugnancy test has failed to resolve this tension, instead producing a divergence between formal legal doctrine and entrenched customary practice. Addressing this challenge requires a more proactive governmental response - one that confronts deep-rooted gender stereotypes and ensures the effective implementation of judicial decisions. Furthermore, rather than relying exclusively on the repugnancy test, courts should explicitly engage with human rights standards in their reasoning, given their enforceability under Cameroonian law.

## 2. The Concept of Customary Law and its Evolution in Cameroon

The trajectory of customary law in Cameroon has been profoundly shaped by colonial interventions, statutory enactments, and modern reforms. In the contemporary era, it operates within a plural legal framework, frequently subordinated to state law through the doctrines of repugnancy and incompatibility, and often in tension with international human rights norms (Ndulo 2001, Kiye 2021).

In pre-colonial Cameroon, customary law functioned as the indigenous body of norms governing community life and served as the principal legal framework across society. It was community-based, unwritten, and dynamic, reflecting cultural norms and practices, and played a central role in regulating family relations, marriage, succession, property, and the resolution of disputes (Ewang 2001).

The advent of colonial rule introduced statutory law and entrenched a politics of legal dualism in most African nations. Cameroon, for example, was partitioned between Great Britain and France after Germany's defeat in World War I. Each administered their portion—British and French Cameroons—under the League of Nations Mandate and later the UN Trusteeship system, introducing English common law and French civil law, respectively, into a territory previously governed by diverse customary laws.<sup>1</sup> In British Cameroons - now Southern or Anglophone Cameroon - Article 9 of the British Mandate Agreement played a pivotal role in establishing English law, as it granted Britain the

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<sup>1</sup> In pre-colonial Cameroon, there existed a wide variety of what is today known simply as traditional or customary law. See Baaboh 2021; see also Ewang 2001.

authority to apply its legal system within the territory (Ngwafor 1995, 70). Following independence, the 1961 Federal Constitution and subsequent legal frameworks preserved the continuity of colonial-era laws (*ibid.*). For Southern Cameroon specifically, this continuity was expressly reaffirmed in Section 11 of the Southern Cameroons High Court Law of 1955, which ensured the sustained application of English legal principles.<sup>2</sup>

Although English common law was introduced to Southern Cameroon imposed, the colonial authorities permitted a limited recognition of customary law, subject to subject to the doctrines of repugnancy (excluding rules deemed contrary to justice, equity, and good conscience) and incompatibility (excluding rules inconsistent with statutory law) restrictive tests of “repugnancy” (excluding rules deemed contrary to justice, equity, and good conscience) (Ewang 2001; see also Kiye 2021).

Also, Cameroon has progressively incorporated a wide range of international human rights instruments into its domestic legal framework, thereby committing itself to the protection and promotion of the rights enshrined in them. These include the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the African Charter on Human and Peoples’ Rights (1981), and the Convention on the Rights of the Child (1989). As a result, Cameroon now operates within a plural legal system that combines inherited colonial law, statutory law, human rights principles, and customary law—frequently in tension with one another (Enonchong 2016, 389; see also Ndulo 2001).

Customary law remains socially significant in Southern Cameroon, as customs continue to regulate vital aspects of social life and embody cultural identity, even though they sometimes conflict with constitutional guarantees and international human rights standards (Ndulo 2001). This tension is most visible in inheritance practices, where male primogeniture and the exclusion of widows and daughters persist despite constitutional commitments to international human rights standards including gender equality (Kiye 2015a, 76).

Under customary inheritance law, women continue to be treated, in many respects, as legal minors. Their rights are often limited to usufructuary interests, leaving them without the freedom to inherit, own, or dispose of property. The practice of dowry payment further entrenches inequality in matters of inheritance and succession: once dowry is paid and a woman is married, she is regarded as part of her husband’s estate - unable to inherit but capable of being inherited (Kiye 2015a, 76). This exclusion from land ownership (land being a critical economic and social resource) undermines both gender justice and broader national development. Nevertheless, customary law retains significant influence in many communities, sustaining practices that perpetuate structural inequality (Ndulo 2001).

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<sup>2</sup> Southern Cameroon High Court Law, 1955, section 11. It stipulated thus: Subject to the provisions of any written law and in particular of this section and of sections 10, 15 and 27 of this law, the common law, the doctrines of equity, and the statutes of general application which were in force in England or the 1st day of January, 1900, shall in so far as they relate to any matter with respect to which the legislature of the Southern Cameroons is for the time being competent to make laws, be in force with the jurisdiction of the court. See also Kiye 2021.

To address such persistent conflicts between customary law and human rights principles, statutory courts in Southern Cameroon have relied on the repugnancy and incompatibility tests (highlighted above), codified in Section 27(1) of the Southern Cameroons High Court Law (SCHL, 1955). This test empowers the courts to render discriminatory customary rules unenforceable where they contravene written law or established human rights standards. In practice, it has facilitated the judicial rejection of customs that disadvantage women, marking a significant shift toward integrating human rights into the interpretation of customary law (Kiye 2021).

Yet, the impact of these judicial interventions remains limited. Although a discriminatory rule may be invalidated in court, such practices often persist informally within communities, enforced by traditional authorities without legal consequence (Kiye 2021). This reality underscores a widening disconnect between the law as articulated by statutory courts and its application in everyday life, particularly within unofficial customary forums. The result is a dual system in which progressive judicial pronouncements coexist uneasily with entrenched social practices, highlighting the challenges of reconciling human rights principles with customary norms in Southern Cameroon.

The historical trajectory of customary law in Cameroon reveals its enduring influence but also its subordination to statutory and international legal frameworks. This background sets the stage for examining how human rights principles—particularly gender equality and non-discrimination—have been incorporated into Cameroon’s constitutional and judicial framework. The following section therefore turns to the justiciability of this principle, highlighting the constitutional supremacy of ratified human rights instruments and the challenges posed by judicial over reliance on the duality test (the repugnancy and incompatibility doctrines) when addressing discriminatory customary practices.

### **3. The Human Rights Principle of Gender Non-Discrimination: Its Justiciability Before Southern Cameroon Courts**

Human rights law constitutes one of the officially recognized sources of law in Cameroon. Since independence in 1960, Cameroon has progressively incorporated a wide range of international human rights instruments into its national legal framework. These rights are understood as universal, rooted in human dignity, and independent of cultural or racial context. Among them, gender equality and non-discrimination stand as fundamental principles, reflected in instruments such as the UN Charter, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the African Charter on Human and Peoples’ Rights (ACHPR)—all of which Cameroon has ratified.

Cameroon’s 1996 Constitution expressly affirms these principles, particularly in paragraphs 4 and 5 of its Preamble. Paragraph 4 prohibits discrimination on the grounds of race, religion, sex, and belief, while paragraph 5 reaffirms the state’s commitment to the fundamental rights enshrined in key international instruments, including the UN Charter, the UDHR, and the ACHPR. Most significantly, Article 45 of the Constitution

establishes the supremacy of ratified international treaties over national and customary laws. Once ratified, such treaties become binding and override conflicting domestic provisions, including discriminatory customary rules. Accordingly, the principle of gender non-discrimination is justiciable before courts across Cameroon, including those in Southern Cameroon.

Despite this constitutional mandate, courts in Southern Cameroon frequently rely on the duality test, codified in Section 27(1) of the Southern Cameroons High Court Law of 1955, rather than directly invoking human rights instruments when invalidating discriminatory customary practices (Kiye 2015b). This section argues that, under Article 45, courts should explicitly ground such decisions in human rights law, particularly in cases concerning women's property and inheritance rights. It further contends that customary law, by virtue of its subordinate legal status, is subject to human rights scrutiny and must be interpreted in line with constitutional and international standards of equality.

### *3.1. The United Nations Charter: Reaffirming Equal Rights of Men and Women*

The UN Charter, drafted in the aftermath of World War II, marked a turning point in the recognition of equality as a cornerstone of international peace and security (United Nations Office of the High Commissioner for Human Rights – OHCHR – and International Bar Association 2003, 634). It affirms that human rights and fundamental freedoms must be respected “without distinction as to race, sex, language, or religion” (United Nations, Charter, 1945, Art. 55(c)). The Preamble underscores “the dignity and worth of the human person” and “the equal rights of men and women,” a commitment reiterated in Articles 1(2), 1(3), 13(1)(b), and 76(c).

This principle was reinforced by the 2012 Declaration of the High-Level Meeting on the Rule of Law (UN 2012), which urged states to guarantee women's full participation in public life, access to justice, and protection against discrimination and gender-based violence.<sup>3</sup>

Cameroon, a UN member since 20 September 1960, is bound by the Charter. Under Article 45 of the 1996 Constitution, ratified treaties override conflicting national or customary norms. Accordingly, gender non-discrimination is enforceable before courts throughout Cameroon, including Southern Cameroon.

### *3.2. The Universal Declaration of Human Rights (UDHR): Establishing Core Human Rights Principles*

Adopted in 1948, the Universal Declaration of Human Rights (UDHR) consolidated equality before the law as a cornerstone of international human rights. Widely regarded as the foundation of the modern human rights system, it enshrines universality, indivisibility, and non-discrimination. Key provisions include:

- Article 1: all human beings are born free and equal in dignity and rights.

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<sup>3</sup> In September 2012, representatives of UN member states gathered at the UN Headquarters in New York City, to adopt the Declaration of the High-Level Meeting on the Rule of Law. In this instrument, they reaffirmed their commitment to the rule of law and its fundamental importance, and for the further development of the main pillars upon which the UN is built.

- Article 2: rights apply without distinction, including sex.
- Article 7: equal protection under the law.
- Article 17: the right to property and protection against arbitrary deprivation, implicitly supporting women's inheritance rights.

Although not legally binding, the UDHR has shaped binding treaties and domestic reforms, and its principles are now widely accepted as customary international law (OHCHR and International Bar Association 2003, 636). Cameroon, like all UN member states, has ratified multiple treaties reflecting UDHR values, providing a strong legal foundation for the justiciability of gender non-discrimination before its courts, particularly in matters of succession and inheritance.

### *3.3. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Affirming Gender Equality*

Adopted in 1979, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) - often described as the International Bill of Rights for Women - sets global standards for eliminating discrimination and advancing women's rights across civil, cultural, economic, political, and social spheres. Together with its Optional Protocol, it obliges States to adopt legal and policy measures that guarantee gender equality.

Cameroon ratified CEDAW on 23 August 1994 and acceded to the Optional Protocol on 7 January 2005, thereby committing to address discrimination in property rights and ensure women's equal access to, control over, and ownership of land. The Preamble recognizes gender-based discrimination as a violation of dignity and equality, while Article 1 defines it broadly as any exclusion or restriction based on sex.

Key provisions include:

- **Article 2:** requires constitutions and legal frameworks to enshrine gender equality and repeal discriminatory laws, customs, and practices.
- **Article 5:** mandates changes in cultural and social conduct to eliminate stereotypes—such as inheritance customs in Southern Cameroon that deny women land rights.
- **Article 13:** obliges States to eliminate economic discrimination and ensure equal access to resources, including land, loans, and credit.
- **Article 16:** guarantees equality in marriage and family life, affirming women's rights to own, manage, and dispose of property.

Through these provisions, CEDAW establishes a binding framework that subjects discriminatory customary practices to human rights scrutiny and reinforces women's property and inheritance rights in Cameroon.

### *3.4. The African Charter (1981): A Regional Affirmation of Gender Equality*

Gender equality and non-discrimination are core principles enshrined in the *African Charter on Human and Peoples' Rights* (1981). By ratifying the Charter and later the *Protocol to the African Charter on the Rights of Women in Africa* (Maputo Protocol), Cameroon undertook binding obligations to eliminate discrimination against women, including



customary practices such as inheritance rules in Southern Cameroon (African Commission on Human and Peoples' Rights 1989). Notably, paragraph 5 of the Preamble to the 1996 Constitution reaffirms Cameroon's commitment to the freedoms guaranteed in the African Charter (African Union 2009).

Articles 2 and 3 of the Charter guarantee equal rights for all, prohibiting gender-based restrictions on property ownership and inheritance. Articles 18(3), 19, and 21 further require States to eradicate discrimination and protect women's rights, emphasizing that no group should dominate another on the basis of gender. These provisions provide a regional legal foundation for challenging discriminatory customary inheritance practices (African Charter on Human and Peoples' Rights (1981), arts 2, 3, 18(3), 19, 21).

The Maputo Protocol strengthens these protections. Articles 2, 8, and 9 call for legal and educational measures to end harmful cultural practices and promote gender equality before the law. Articles 6, 7, 20, and 21 specifically address equality in marriage, inheritance, and property rights—guaranteeing women's rights to acquire and manage property, ensuring widows' equitable shares of marital assets, and affirming equal inheritance rights for men and women. Article 21 further requires States to promote women's access to land and property, underscoring the need to reform discriminatory customary laws (Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), arts 2, 6, 7, 8, 9, 20, 21).

Importantly, under **Article 45 of Cameroon's Constitution**, ratified treaties such as the African Charter and Maputo Protocol override conflicting national and customary norms (Constitution of Cameroon (1996), art 45). This supremacy clause means that discriminatory inheritance practices in Southern Cameroon are not only inconsistent with regional human rights obligations but are legally unenforceable within Cameroon's domestic framework.

#### **4. State Measures to Address Discriminatory Customary Laws in Cameroon**

In line with international and regional human rights instruments, the Cameroonian government has adopted laws to combat all forms of discrimination, particularly gender-based discrimination embedded in customary law (Kiye 2015a, 77). The 1996 Constitution explicitly prohibits discrimination, especially on the basis of gender, and guarantees equal rights for all, including the right to own and control property.<sup>4</sup> Article 1(2) further mandates that only traditional values consistent with democratic principles, human rights, and the rule of law shall be recognized.

Women's rights to property and land are constitutionally protected, and any customary practice depriving women of such rights lacks legal justification. The Penal Code, while not directly addressing discriminatory customs, provides general provisions that can be interpreted to sanction harmful traditional practices (Tapscott 2012; see also Code Pénal [Cameroon], n° 67/LF/1). More notably, the Civil Status Registration Ordinance grants inheritance rights to widows (Civil Status Registration: Ordinance No. 81-02 of 29 June

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<sup>4</sup> Preamble to the Constitution of the Republic of Cameroon, 1996, para 5(19). It states that, "Ownership shall mean the right guaranteed to every person by law to use, enjoy and dispose of property. No person shall be deprived thereof, save for public purposes and subject to the payment of compensation under conditions determined by law".

1981, Art 72(2), and the Administration of Estates Act recognizes surviving spouses as primary beneficiaries in cases of intestate succession (Administration of Estate Act, 1925, Section 46(1)).

Despite these legal protections, discriminatory inheritance practices persist in Southern Cameroon, particularly in rural areas. Weak enforcement mechanisms allow customary norms that deny women access to land to endure (Kiye 2015a, 82). Moreover, statutory protections apply mainly to married women and legitimate children, leaving single mothers, concubines, and illegitimate children without inheritance rights under formal law (Kiye 2015a, 86). Paradoxically, customary law may offer these marginalized groups limited usufruct rights (Rebouche 2006; see also Kiye 2015a, 77), which underscores the need for reform rather than wholesale rejection.

### **5. Reforming Customary Law through Section 27(1) of the Southern Cameroons High Court Law (SCHL)**

In response to the gap between formal legal protections and actual practice, courts in Southern Cameroon have increasingly relied on Section 27(1) of the SCHL,<sup>5</sup> which empowers them to reject customary rules that are “repugnant to natural justice, equity and good conscience” or “incompatible with any law in force.” This “duality test” — comprising the repugnancy and incompatibility tests — offers an avenue to align customary law with human rights principles (Kiye 2015b, 87).

The repugnancy test bars enforcement of customs that are offensive, inequitable, or barbaric. Since customary inheritance rules often exclude women and reinforce male dominance over land, they can be deemed repugnant. Courts, however, are not authorized to modify such customs — only to accept or reject them (Southern Cameroon High Court Law (SCHL) 1955, S. 27(1). See also Kiye 2015b, 87-89).

The incompatibility test ensures that no customary rule supersedes domestic legislation or ratified international treaties (Southern Cameroon High Court Law (SCHL) 1955, S. 27(1)). As human rights norms have constitutional status in Cameroon (Article 45), any customary law that violates these norms — such as discriminatory inheritance practices — is rendered unenforceable.

While the duality test is a valuable tool for reform, its application has been inconsistent and sometimes vague. It has fragmented the legal process and reduced explicit engagement with human rights discourse in court rulings.<sup>6</sup> Courts should more clearly invoke human rights standards in their decisions and complement the duality test with grassroots gender equity initiatives to bridge the gap between law and social practice.

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<sup>5</sup> Southern Cameroons High Court Law (SCHL), 1955, Sec. 27(1). It states thus, “The High Court shall observe, and enforce the observance of every native law and custom which is not repugnant to natural justice, equity and good conscience, nor incompatible with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such native law or custom.” This provision has two major effects: firstly, it recognizes customary law as a form of law; and, secondly, it provides for the regulation of customary law subject to its enforcement.

<sup>6</sup> Overreliance on the duality test has caused most courts in Southern Cameroon to often fail to expressly refer to human rights values (values that are rightly justiciable before Cameroonian courts) in their decisions. See Kiye 2015a, 77.

Customary law remains a major source of law in Cameroon but lacks formal legislative recognition post-independence. Its legal authority in Southern Cameroon stems from the colonial-era SCHL, which, while preserving the relevance of custom, subjects it to the repugnancy and incompatibility filters. This approach was inherited from British colonial legal policy and shifts the determination of acceptable custom from communities to the courts. While the duality test has contributed to the abolition of certain discriminatory customary rules, it has not succeeded in curbing their continued observance within society. Moreover, its application has often produced some unintended and undesirable outcomes.

## **6. Gender Discrimination Sanctioned by Customary Law on Inheritance in Southern Cameroon: The Impact of Section 27(1) SCHL**

Gender discrimination is a notorious feature of customary law across sub-Saharan Africa, largely due to patriarchal social structures that deny women equal status. In Southern Cameroon, this is especially evident in matters of succession and inheritance (Njieassam 2019). Customary courts, known for their conservatism, are obliged to apply prevailing local customs, many of which are rooted in essentialist, gender-biased assumptions. Consequently, their rulings on inheritance often undermine women's legal capacity to acquire, own, and dispose of property. To counter this, superior courts in Southern Cameroon have increasingly invoked the repugnancy test as a means to reject such discriminatory customs. The test has thus served as a subtle vehicle for introducing human rights principles into customary jurisprudence (Kiye 2015a, 75). However, while it represents a step toward reforming harmful customs, much more is needed to ensure the court's egalitarian rulings translate into practical realities.

Most customary laws in Southern Cameroon bar women from inheriting from their parents or husbands, offering at most usufruct rights. This stems from a perception of women as legal minors who cannot contract or own property (Ngwasiri and Nje 1995, 13). The payment of dowry reinforces this notion, often used to justify the exclusion of women from property rights.<sup>7</sup> In *Achu v Achu* (reported in Ngwafor 1993, 196), Justice Inglis famously remarked that under customary law, a wife is considered part of her husband's property and thus cannot share in landed property upon divorce. Dowry payment transforms the woman into a possession—part of the husband's estate—rendering her ineligible to inherit. Instead, upon his death, she may be “inherited” through levirate marriage by a male relative and remains accountable to his family (Kiye 2015a, 85). Though Section 77(2) of Cameroon's Civil Status Ordinance<sup>8</sup> prohibits

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<sup>7</sup> Ngwafor 1993. See the case of *Theresia Amih v Amih Sam*, Court of Appeal of the Southwest Region: Suit No: CASWP/CC/86/95: unreported, in which, His Lordship, Justice Ebong, explained the role of dowry in customary marriages at page 2 of his judgment.

<sup>8</sup> An unforeseen consequence of the repugnancy test is the influence it has had on the development of other laws in Cameroon. When a custom has been notoriously adjudged as repugnant by the court, the legislature in turn finds it necessary to enact a specific legislation outlawing the said custom. Therefore, the legislature draws its inspirations from the courts, as it repeals by necessary implications any rule of customary law adjudged by the courts as obnoxious. Some provisions of the Civil Status Ordinance, 1981, such as Sections 77(2), is illustrative. This provision states thus, “[i]n the event of death of the husband, his heir shall have no right over the widow, nor over her freedom or the share of the property belonging to her”.

levirate marriage and grants inheritance rights to widows, such customs remain prevalent in many communities.

Customary law also prevents daughters from inheriting their father's estate in the presence of male heirs. This was illustrated in *Nyanja Keyi Theresia & Ors v Nkwingah Francis Njanga and Keyim* (High Court of Fako Division: Suit No. HCF/AE57/97–s98: unreported), where the deceased's daughters, though of age, did not challenge the appointment of male relatives as estate administrators—a reflection of customary norms denying daughters the right to intestate succession. When mismanagement prompted the daughters to seek administration, the court recognized the discriminatory custom and, invoking the repugnancy test, found it unenforceable.

Another discriminatory practice is the exclusion of married women from inheriting their father's estate. The rationale is that such inheritance could lead to the transfer of family land to the husband's lineage, thereby weakening family continuity (Kiye 2015a, 91). In *Chibikom Peter Fru & Ors v Zamcho Florence Lum* (1993), the Supreme Court rejected this reasoning, affirming that excluding married daughters violates the constitution and Section 27 of the SCHL. The court thus declared such a custom void. While this ruling was a significant victory for the human rights principle of non-discrimination, its practical effect remains limited. Without broader societal change, rejected customs persist, particularly in rural areas.

### 6.1. *Unintended Consequences of Section 27(1) SCHL*

The application of Section 27(1) of the SCHL—requiring that customary law be neither repugnant to natural justice nor inconsistent with written law—has had mixed results. While it has helped restrict discriminatory customs, it has also introduced ambiguity and inconsistency.

First, the lack of clear standards for applying the repugnancy test has led to unpredictable rulings. Courts apply the test flexibly, guided more by individual judges' perceptions of justice than by a consistent legal framework (Kiye 2015b, 94). This has resulted in contradictory precedents. For instance, while the court in *Estate of Agboruja* (*ibid*) upheld levirate marriage, the court in *David Tchakokam v Keou Magdaleine* (1999) invalidated it under Section 27(1), granting the widow inheritance rights. The discrepancy illustrates the inconsistent application of the test and the absence of coherent criteria.

In some cases, the courts have even used the duality test to justify discriminatory rulings, as seen in *Nanje Bokwe v Margaret Akwo* (Suit No. CASWP/CC/22/82: unreported), where the Court of Appeal denied a married woman inheritance rights in favor of a male relative. Such decisions reflect an excessive judicial discretion in the application of the duality test that erodes legal certainty and undermines the very purpose of the test.

Moreover, overreliance on the duality test has diminished the use of human rights discourse in statutory courts. Unlike courts in other African jurisdictions, courts in Southern Cameroon seldom invoke human rights principles, even when cases clearly implicate such concerns. In *David Tchakokam* (discussed above), despite ruling in favor of the widow, the judge (Justice Vera Ngassa) relied on statutory provisions rather than

explicitly referencing human rights. This missed opportunity is particularly troubling given the judge's reputation as a feminist and human rights advocate (Kiye 2015a, 89).

A further issue is the divergence between "lawyer's customary law" (what courts recognize) and "sociologist's customary law" (what communities practice). Due to weak law reporting and limited public reach, court rulings seldom affect customary practices on the ground. As a result, customs declared void by courts continue to be observed within communities, creating a fragmented legal reality (Kiye 2015b, 96).

Compounding this problem is the role of unofficial customary courts, led by local chiefs under Decree No. 77/245 of July 15, 1977. These forums resolve most local disputes and are preferred for their affordability and cultural relevance. However, they often apply customs that superior courts have already invalidated, particularly in matters of succession and inheritance (Kane *et al.* 2005). This not only perpetuates discrimination but also reveals the limits of judicial reform in the absence of broader institutional and cultural change.

In sum, while the duality test has offered a legal mechanism for curbing discriminatory customary practices, its inconsistent application, limited reach, and failure to foster a culture of rights have significantly undermined its effectiveness. Meaningful reform must therefore go beyond court rulings to include broader legislative action, legal education, and cultural engagement.

## 7. Conclusion

Pre-colonial Cameroon was characterized by diverse cultural traditions and belief systems, which defined women's access to land without formal qualification. The advent of colonialism introduced external legal systems—including English common law, French civil law, and later, international human rights law—creating a plural legal landscape. In Southern Cameroon, English common law, customary law, and human rights norms now coexist. However, the interaction between customary law and human rights law has been marked by tension, particularly due to the patriarchal nature of many customary norms. While human rights promote gender equality and non-discrimination, customary inheritance practices in Southern Cameroon often deny women property rights, reinforcing their subordinate social status.

This conflict has led to legislative efforts aimed at eliminating discriminatory customs. Yet, in practice, such laws have had limited impact. Customary practices that disempower women in inheritance matters continue to prevail in many communities, despite legal prohibitions. The ineffectiveness of legislation has prompted courts to take a more active role through the application of Section 27(1) of the Southern Cameroon's High Court Law (SCHL). This provision preserves the use of customary law but subjects it to a duality test – a test that renders unenforceable any custom that is deemed repugnant to natural justice or inconsistent with statutory law.

The courts' gender-sensitive application of the duality test has led to the rejection of several discriminatory customs. At its inception in 1955, the test was well-suited to eliminate practices offensive to human dignity. However, in today's human rights era, it has become inadequate. It fails not only to fully resolve the conflict between customary inheritance law and gender equality, but also to address the root causes of

discriminatory practices. As a result, customs that exclude women from inheriting property persist, even after being invalidated by statutory courts.

As societies evolve, so too must their laws. Customary law, as a community-based legal system, should ideally evolve from within the community. Thus, this article argues that to truly resolve the conflict between inheritance customs and the principle of gender non-discrimination, court-driven reforms must be complemented by grassroots, community-based initiatives. Programs aimed at changing social attitudes—through dialogue with local leaders and community members—are essential. Traditional authorities, in particular, should be encouraged to guide the evolution of customary norms in ways that reflect both local values and human rights commitments.<sup>9</sup>

Reform led from within the community is more likely to be seen as legitimate and reflective of collective aspirations, rather than as an external imposition. This would foster a sense of ownership over the law and strengthen respect for legal change. With such measures, customary inheritance law would gradually align with human rights standards—particularly the principle of gender equality—enshrined in international treaties ratified by Cameroon. In turn, human rights norms would become more responsive to local cultural realities. A more proactive embrace of human rights values by the courts would further deepen their role in regulating customary law and delegitimizing harmful practices. Together, these approaches hold promise for advancing gender justice and transforming discriminatory inheritance customs in Southern Cameroon.

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<sup>9</sup> One practical way of doing this is to encourage the use of customary legislation by chiefs to provoke changes in applicable customary laws in their communities. Also, because human rights values are rarely respected in the rural areas due to a lack of awareness, an elaborate program for human rights education is likely to be an effective way of improving the protection of human rights in the country and, incidentally, eradicating customary values that conflict with human rights.

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