

The Maputo Protocol and the Eradication of the Cultural Woes of African Women: A Critical Analysis

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Abstract

The Maputo Protocol is an African human rights instrument that seeks to protect African women and girls from the negative effects of cultural woes. Hence, this Protocol has been hailed as an African solution to African problems. However, though the Protocol is described as far-reaching because it treats areas that have not been covered by other human rights instruments such as women's reproductive health issues, protection against HIV and AIDS,¹ domestic abuse and marital rape,² its scope is somehow limited. The objective of this article is therefore, to point out that the Protocol needs to be more inclusive by naming what we refer to as the "forgotten" cultural woes of African women and girls. These include: the African woman-to-woman marriage of convenience, payment of cultural bride price, breast ironing, and trafficking in women and girls. Other woes have been discussed only to ensure continuously denouncement to avoid "window dressing" implementation of the Protocol. Hence, the cultural woes discussed in this article can only be efficiently dealt with by naming them in the Protocol the same way female genital mutilation (FGM)³ and others have been named.

A. Introduction

The Maputo Protocol was passed on July 11, 2003 in Maputo, Mozambique as a Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

As of October 2015, thirty-seven out of the fifty-four Member States of the African Union (AU) have ratified the Protocol. However, some countries ratified the Protocol with reservations⁴ on the grounds that certain issues covered by the Protocol are issues consid-

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1 L Musyimi-Ogana, "Ownership of the African Women's Rights Protocol and win-win case for reporting." See generally, B Kombo, R Sow and F Jama (Editors), "Journey to Equality: 10 years of the Protocol on the Rights of Women in Africa" (2013), a joint initiative of Solidarity for African Women's Rights and make Everywoman Count, Equality Now, 20.

2 As above.

3 Benin, Burkina Faso, Cameroon (see the 2016 Penal Code), Gambia, Ghana and Guinea Bissau, have passed legislation punishing FGM. See generally, Asuagbor Lucy (Rapporteur), Commission on the Status of the Implementation of the Protocol to the African Charter on Human and People's Rights, Report, 60th Meeting, (New York, March 18, 2016), 3 -7.

4 See Asuagbor Lucy (Rapporteur), (n 3 above).

ered as highly controversial within the African context- not in accordance with African beliefs and customs. Nevertheless, this Protocol addresses important human rights issues affecting African Women and girls.

Essentially, the Maputo Protocol completes the African Charter, which is the primary treaty providing a human rights framework in Africa because its provisions⁵ on the protection of women's rights are largely regarded as inefficient and inadequate.⁶ The Maputo Protocol was therefore born as a result of disillusionment with the African Charter, and has the sole objective of eradicating harmful practices that violate the human rights of African women and girls. However, African women and girls still continue to be victims of discrimination and harmful practices.⁷

Generally, the Protocol is hailed as an “African solution to African problems” aimed at eradicating harmful practices that go against the protection of the human rights of African women and girls. In the light of the above and among other provisions, the Protocol provides that “States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.”⁸ Furthermore, the Protocol was acclaimed during its 10th anniversary as the only treaty that specifically addresses African women's reproductive health issues including protection against HIV and AIDS.⁹ Also, the Protocol is acknowledged for providing legal protection for African women against gender-based violence in the public and private spheres, including domestic abuse and marital rape.¹⁰ In the light of the above, there is no doubt that the Maputo Protocol provides far-reaching human rights guarantees for African women and girls.¹¹

There is therefore no contradiction to state that the provisions afforded by the Maputo Protocol are very relevant. However, some of these provisions are vague and do not facilitate implementation. In our view, the Protocol will be easier to implement if provisions dealing with discrimination, violence and harmful practices, name many of the vices that constitute the prohibited acts, practices and omissions. This will leave no room for ‘window dressing’ implementation. Furthermore, the human rights of African women can be effectively protected if the practices that exploit and degrade them are named. For example, Article 5 of the Protocol provides that:

... State Parties shall take all necessary legislative and other measures to eliminate such practices, including: ...

5 Arts 2, 3 and 18(3).

6 Kombo; Sow and Jama (Editors) (n 1 above) 19.

7 See the Preamble of the Maputo Protocol.

8 See art 3(3) of the Maputo Protocol.

9 Musyimi-Ogana (n 1 above) 1.

10 As above.

11 See Asuagbor Lucy (Rapporteur), (n 3 above). 3-10.

b) Prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them.

By naming female genital mutilation as a harmful practice, the Protocol influenced some State Parties to enact laws that punish this practice. Cameroon¹² for example, has just enacted a new penal code that punishes female genital mutilation among other offences. That code provides in section 277-1 entitled, ‘genital mutilation’ that:

(1) Whoever mutilates the genital organ of a person by any means whatsoever, shall be punished with the penalties provided for in section 277¹³ (2) The penalty shall be imprisonment for life where (a) the offender habitually carries out such practice or does so for commercial purposes; (b) it leads to the death of the victim.

The above reason makes for the argument that more of the cultural woes of African women and girls should be named and integrated into the Maputo Protocol and why not into other international human rights instruments geared towards protecting women and girls. Besides, this reason confirms the assertion that once signed and ratified, international human rights instruments influence national laws. This article therefore seeks to reveal the weakness of the Maputo Protocol in failing to address some of the cultural woes that African woman and girls live with on a day-to-day basis. Another purpose of this article is to create awareness around the forgotten cultural woes, so that they can be integrated into all discourses about the protection of the basic human rights of African women and girls.

B. The Forgotten Cultural Woes of African Women

We consider the following as the forgotten cultural woes of African women and girls. These form the basis of this article, and most of them have not been covered by the Maputo protocol.

I. African Woman - to - Woman Marriage of Convenience

Whether called “Nyumba Ntobhu” or “Mokamoona,” the African-style same sex marriage is a union whereby, teenage girls get “married” to old, wealthy and sometimes, barren women. This type of marriage is said to be widespread in African, recorded in thirty different regions in sub-Saharan Africa as early as in 1910.¹⁴ This is a marriage of convenience

12 It is true of Benin, Burkina Faso, Gambia, Ghana and Guinea Bissau.

13 That section is titled, “grievous harm,” and provides that “whoever permanently deprives another of the use of the whole or of any part of any member, organ or sense shall be punished with imprisonment for from 10 to 20 years.

14 KA Kjerland, “When African Women take Wives: A historiographical Overview, Research Program: Poverty and Prosperity in Africa, Local and Global Perspective”, Occasional Papers, Number 6 Uppsala Universitet, Uppsala, (1998) 2.

that seems to be founded in the belief that if a woman dies barren, she will be buried in an arid place signifying that she left no child to inherit her property. For this reason, a woman will do everything before she dies to ‘get’ a son through a young girl that she ‘marries.’¹⁵ Others will ‘marry’ a young girl to relieve them from the burden of household chores and farm work. However, this slavish arrangement is said to be practiced mostly by barren wealthy women from patrilineal societies who want male descendants to inherit their property.¹⁶ It is also a practice common among queens who hold that they cannot combine political power with the functions of pregnancy and childbirth.¹⁷ There are also reports that some of the women use the girls they “marry” to earn money by hiring them out to men for sexual service.¹⁸ The bottom line is that in most areas where this woman-to-woman marriage is rampant, there is a direct link between the accumulation of wives by women, the acquisition of wealth and the exercise of power and authority by women. Some women ‘marry’ as many as nine ‘wives’ and arrange with a man to meet the sexual needs of the ‘wives.’¹⁹ Hence, the exploitative nature of this type of relationship has led some to consider such ‘wives’ as slaves.²⁰

Moreover, to support this practice, most of the victims are cajoled into believing that they will not find male suitors, and at times they are not informed of the real nature of the relationship. In communities where this woman-to-woman marriage is practiced, nobody wants to talk about it, and though considered illegal in most communities, it is still going on in traditional societies.²¹

The woman-to-woman marriage is indeed a traditional form of same-sex marriage where the ‘woman husband’ pays a bride price like in any other traditional marriage, and is said to enjoy the status and customary rights of a husband over her ‘wife or wives’ just like a man.²² The parties then live together as a ‘normal’ couple, except of course having sex.²³ ‘Female husbands’ are said to prefer this type of arrangement because ‘their wives’ show more commitment than hired assistants.²⁴ However, the unique characteristic of this union

15 As above 1.

16 As above 5.

17 Kjerland (n 14 above) 5

18 As above 5 & 9.

19 Egodi Uchendu ‘Woman - Woman Marriage in Ibo Land’ posted at www.academia.edu, [Last accessed 2 July 2016].

20 As above.

21 N Nofuru, “A Tradition among the Balong Ethnic group permits Heterosexual Women to Marry other Women”, (Global Press January 18, 2013). Posted at <https://globalpressjournal.com>. [Last accessed 2 July 2016].

22 Uchendu (n 19 above) 6.

As above.

23 F Majani, “Tanzania Marriage of Convenience”, posted at www.mg.co.za (November 2014). [Last accessed July 21, 2016].

24 F Majani (n 23 above).

remains the fact that there is no sexual implication between the parties.²⁵ Hence, there is no sexual relationship between the couples – the relationship is not homosexual and also not a plain heterosexual union.²⁶

Consequently, to bear children in this strange union, a man is hired to have sex with the young girl until she gets pregnant, and the hired man is usually paid off with foodstuff or livestock. Also, the hired man may be required to enter into an agreement with the couple that he will not claim paternity of the children the girl will bear. Hence, the children take the name of their mother's 'husband'. Besides, such hired men may be strangers or irresponsible members of the relevant community.²⁷ Also, at times, the 'wife or wives' may be asked to conceal their pregnancy²⁸ from the man responsible for it. However, despite all the above measures if the hired man discovers the pregnancy and claims paternity of the child or children, under customary law, he will be required to refund the bride price that the "female husband" paid to the parents of her 'wife or wives'.²⁹

Furthermore, some of the 'female husbands' give their 'wives' to their own husbands but do not consider them as co-wives.³⁰ At times, even if the 'female husband' does not make such arrangements the young girl may still be sexually harassed by the 'female husband's' own husband.³¹

Also, some studies have revealed that most of the victims of this 'strange' union are not educated; some are complete illiterates or have not gone above primary school.³² Thus, the poverty of victims seems to be at the centre of this practice. This is because most of the victims are from economically disadvantaged backgrounds and/or orphans.³³ Other causes of this woman-to-woman marriage are disability of the victim and teenage pregnancy. In such cases, victims are brainwashed to believe that they will not be able to find male suitors. Whereas, this huge human rights violation can be solved by hiring servants instead of mortgaging the future of young girls.

Hence, nowadays, where this woman-to-woman marriage is practiced, nobody wants to talk about it – it is swept under the carpet although it is a flagrant violation of the basic human rights of vulnerable girls. Also, children born out of such arrangements bear a heavy psychological burden as they are treated by their peers as outcasts and are usually ashamed

25 Kjerland (n 14 above) 5 & 8.

26 Uchendu (n 19 above) 6.

27 Majani (n 23 above).

28 Sec. 341 of the 2016 Cameroonian Penal Code punishes any person who deprives a child of the evidence of his true parentage with imprisonment for from 5 to 10 years.

29 Nofuru, (n 21 above) 6.

30 Uchendu (n 19 above) 6.

31 As above.

32 Uchendu (n 19 above) 6.

33 As above.

of their backgrounds. Thus, in most cases, they pressurise their mothers to show them their biological fathers.³⁴

It is therefore important to emphasize that the psychological impact associated with the woman-to-woman traditional marriage can be very destructive especially where victims are forced. Consequently, this marriage should be condemned with the same vigour as the marriage of young girls to men old enough to be their grandfathers. More commitment should be taken to prohibit it with a view to totally eradicating it. Hence, we hold that this is a very important omission from the Maputo Protocol.

II. Customary Bride Price

Customary bride price is an African practice that has adverse effects on the human rights of the African woman and girl. Nonetheless, the Maputo Protocol is silent on this though it states that '[a woman will] during her marriage ... have the right to acquire her own property and ... administer and manage it freely'.³⁵ We however hold that failure of the Protocol to address the payment of customary bride price (which is widely practiced in Africa) has left a vacuum that continues to act as a springboard for the violation of the human rights of African women and girls.

In most African societies, customary bride price is the amount of money paid, property or services offered by the family of a groom to the family of his bride for the purpose of marriage.³⁶ Generally, customary bride price connotes compensation to the bride's family for her upbringing, training, and education, or as compensation to her family for taking away one of their food-producers,³⁷ or a payment for the use of the bride's reproductive organ.

Consequently, in most traditional African societies, customary bride price is a very important condition that must be fulfilled before any customary law marriage can take place. Hence, it must be paid because it imparts validity to the institution of marriage³⁸. Also, it is perceived in such societies as a social stabilizing factor. Thus, failure to make such payments will render an African customary marriage null and void. However, in Cameroon for example, this view is contrary to statutory law because the payment of bride price is recognised but not enforced. The 1981 Civil Status Registration Ordinance provides: 'The total or partial payment or non-payment of dowry (bride price), the total or partial execution of any marriage agreement shall have no effect on the validity of marriage.'³⁹ This section fur-

34 Nofuru (n 21 above) 6.

35 Art 6(j).

36 RI Danpullo 'Customary Bride-Price in Cameroon: Do Women Have a Say?' (2000) SAFERE – Vol. 4 No. 2 Vol. 5 No. 1 2000/01 *Southern African Feminist Review* 65.

37 Particularly, in agricultural societies.

38 Danpullo (n 36 above) 65. See for example, marriage in the traditional society of Baba in the North West Region of Cameroon.

39 Sec 70(1).

ther states that any action questioning the validity of marriage as a result of the total or partial failure to execute a dotal agreement (an agreement to pay bride price) shall be rejected on the grounds of public policy. However, despite these statutory provisions, the practice persists with devastating adverse effects on the human rights of married African women.

Besides, the fact that customary bride price can be paid in cash or services, or both, to the bride's parents, and the amount to be paid is fixed through bargaining between the two families, supports the reasoning that customary bride price is considered as the 'purchase price' of a woman.⁴⁰ Furthermore, bride price is paid not to the bride herself but to her father or other male relative (s).⁴¹ Likewise, in traditional societies, a husband who pays a bride price to his wife's parents can say 'he bought' his wife and treats her as a labourer to work on his farm - she will not be entitled to house-keeping allowance and she will shoulder the responsibility of feeding her family.⁴² Besides, such a wife will be expected to go out to the field very early on chilly mornings while her husband remains at home to relax and drink palm-wine; after all, he paid the bride price to marry her.⁴³ Also, in some cases, the wife will be required to work so hard to grow enough crops that she can sell and provide her husband with the money to 'buy' another wife.⁴⁴

Thus, the payment of customary bride price adversely affects African women in many ways including the following:

1. Husband's right to chastise his wife

Under most customary law, a husband will have the right to chastise his wife simply because he paid a bride price to marry her. He may exercise this right for a number of reasons: if his wife fails to feed the family or do household chores, or refuses to have marital relationship with him.⁴⁵ In the Cameroonian customary law case of *Obande v Patricia Obande*, a wife was beaten up by her husband because she failed to do household chores, unjustifiable refusal to have marital relations and for going back home late on market days. The husband was held guilty for cruelty and asked to pay a fine.⁴⁶

2. Women cannot own property

Despite the provision of the Maputo Protocol that '[a woman will] during her marriage, ... have the right to acquire her own property and to administer and manage it freely', women

40 Danpullo (n 36 above) 67.

41 See the Nigerian case of *Okeke v Okoye* suit No. 0/26A/ 1965 (Unreported).

42 A husband might provide salt and meat on market days. Markets hold only once a week in most traditional societies.

43 Danpullo (n 36 above) 67.

44 *Ibid.* 68.

45 As above.

46 See especially, the Oshie Village Council Ledger, 1984.

are systematically deprived the right to own property because they are regarded as property themselves. This situation is underscored by the payment of bride price. Even when a woman controls land she cannot be regarded as the owner because, ‘... [she] is ... regarded as part of her husband’s property. This conception is underscored by the payment of dowry [bride price] on marriage ...’.⁴⁷ Also, the payment of bride price deprives a woman of her right to property at divorce even if she contributed to the acquisition of such property.⁴⁸ Furthermore, she cannot have the custody of her children at divorce.⁴⁹

3. Early and forced marriages

The payment of customary bride price also facilitates the flagrant violation of women’s rights through the betrothing of young girls and even babies, and coercing girls into early marriage.⁵⁰ For example, it has been reported that dowry [bride price] payment is a key catalyst of child marriage in South Sudan where families see their daughters as a source of wealth. A marriage is sealed after a man and his family negotiates and pays a dowry [bride price] to a woman’s family in the form of cattle, other animals, or increasingly, money.⁵¹ It is important to add that this is not happening only in South Sudan, as early and forced marriage is rampant in most traditional societies in Africa.

4. Amount of bride price

The amount to be paid as bride price is fixed through bargaining between the families of the bride and that of the groom, usually determined by the amount paid for the hand of the bride’s mother.⁵² This emphasises the assertion that bride price is the ‘purchase price’ of the bride. In Cameroon, the amount of bride price varies from region to region: very high in certain regions and low in others.⁵³ In this regard, the Cameroonian Penal Code provides:

47 See the Cameroonian case of *Achu v. Achu*, Appeal No. BCA/62/86.

48 See the Cameroonian Customary Law cases of *Catherine Ngeh Tambi v. Elizabeth Tambi*, Judgement of January 1, 90 CCM, No. 27/89/90 (unreported) and *Aneh Christina v. Mbah Andrew Tangoh*, Judgement of May 5, 1988 CCM, (unreported).

49 *Danpullo* (n 36 above) 68. See also the Nigerian case of *Emeakwana v Umeojiako*, Suit No AA/IA/76 (Unreported), delivered by the High Court, Awka on 15/ 10/ 1976.

50 *Danpullo* (n 36 above) 69.

51 See generally, B Stirton, *Child and Forced Marriage in South Sudan*, Report, posted June 6, 2013 at www.hrw.org/news/2013/06/06/child-and-forced-marriage-south-sudan. [Accessed July 21, 2016].

52 *Danpullo* (n 36 above) 66.

53 *Ibid*. See especially, the practice under the Bafut, Kom and Bansa Customary Laws in the North West region of Cameroon.

Whoever demands the whole or any part of an excessive bride price for marriage ... shall be punished with imprisonment for from one to five years or with fine from 5,000 to 500,000 francs CFA, or with both such imprisonment and fine.⁵⁴

Apparently, there is no uniformity of the rules governing the quantum of bride price throughout Africa. In Nigeria for instance,⁵⁵ Anambra State is known for low bride price while high bride price prevails in Awka.⁵⁶ It is worth mentioning that high bride price affects both men and women but it has a double effect on women because if paid, they are treated as 'property', and if their suitors are not rich enough to pay, they may remain concubines with no legal recognition. On the other hand, men who cannot afford such high prices get frustrated because they cannot get married to the women they love.

To fight against the payment of high bride price, a number of laws were enacted throughout Africa. For example, as early as 1956, the Limitation of Dowry Law was passed in the Eastern States of Nigeria, where the practice is widespread. This law makes it an offence to pay or to receive as bride price any amount in excess of the maximum prescribed by the law. It is also an offence to incur any incidental expenses in addition to the amount paid in cash. Either case is punishable with six month's imprisonment.⁵⁷

5. Refund of bride price at divorce

To add insult to injury, a woman is required under customary law to refund the bride price that her husband and his family paid to her family at marriage. This was the case in *Eko v Serah Imbole Ngomba*.⁵⁸ Generally, the Cameroonian 1981 ordinance makes the refund of bride price conditional thus:

In the event of dissolution of a marriage as a result of divorce, the person who received the dowry [bride price] may be asked to pay back all or part of the dowry [bride price] if the court feels that such a person is totally or partially responsible for the divorce.⁵⁹

However, a recent development in Uganda regarding the refund of customary bride price is worth emulating in other parts of Africa. On August 6, 2015 in the case of *Mifumi v Attorney General and Kenneth Kakuru*,⁶⁰ the Ugandan Supreme Court banned the tradi-

54 See Sec. 357(d).

55 See www.onlinenigeria.com/marriage-in-nigeria/bride-price. [Last accessed July 21, 2016].

56 As above.

57 As above.

58 Cameroonian case: Suit No. 28/86-87 C.R. BK. 1/86-87 p. 55 (unreported) Bonjongo Customary Court. This is a Cameroonian case where by the respondent was asked at divorce to pay the bride price that was paid to her parents. See also, Danpullo (n 36 above) 68 and E N Ngwafor *Family Law in Anglophone Cameroon* (The University of Regina press 1993).

59 See Sec. 73.

60 [2010] UGCC 2 (March 26, 2010). See also H Goltom, 'Constitutional, Customary law, Divorce, Family, Marriage and Family Status' (Uganda August 12, 2015), Global Legal Monitor [Last Accessed July 21, 2016].

tional ‘bride price refund’ practice — in which a woman is obliged to refund the items the man paid for her hand in marriage.⁶¹ The case was brought before the court by a local women’s rights organisation on behalf of women who were locked up in abusive marriages because of their inability to refund bride price paid to their parents. In that case, the Chief Justice who delivered the ruling said, “the refund of bride price connotes that a woman [was] on loan. This compromises the dignity of a woman”.⁶²

In the light of the above and by not addressing customary bride price, the Maputo Protocol has allowed a loophole that serves as a catalyst for the continuous violation of the human rights of African women and girls.

III. Breast Ironing

Breast Ironing is a form of body modification, which is practiced in some parts of Africa. Breast ironing is practiced on young girls and it consists of the flattening of their breasts by their mothers or female guardians, in order to make the girls less sexually attractive to men.⁶³ Some will want to know why the breast is targeted – it is thought that the breast is central to the social significance of a girl’s transition into adulthood and maturity.⁶⁴

Breast Ironing is said to affect 3.8 million young African girls.⁶⁵ Thus, it is widely practiced in Africa.⁶⁶ Also, it is important to point out that breast ironing, a crime related to gender-based violence, is under-reported.⁶⁷ Some have even termed it a human rights issue as

61 Posted at www.mifumi.org. [Last accessed 22 July 2016] See also E Anyangwe, (August 19, 2015), Reporting for CNN.), See also Anyangwe Eliza, (2015), ”Imagine Having to pay to Divorce your Abuser, One woman’s 15-year Battle means you now won’t have to “ CNN, August 19 edition. [Online] Available: <http://www.cnn.com/2015/08/19/africa/bride-price-uganda-mifumi-atuki-turner/> (July 17, 2017).

62 As above.

63 R. I Danpullo, *The Socio-Legal Perspective of Child Protection in Cameroon*, (Presses Universitaires d’Afrique, Cameroon (June 2008) 9. ISBN: 978-9956-444-47-2

64 G. Lisa Eriksson, ‘Breast Ironing in Cameroon: A Harmful Practice Restricting Sexuality or a Means to Protect the Girl Child from Harm’, unpublished Masters thesis, University of Gothenburg, (2014) 48.

65 ‘The Terrifying rise of Breast Ironing: Barbaric Ritual sees Young girls having their Chest “Flattened” with Hot Stones to Disguise Puberty’ posted at www.dailymail.co.uk, (10 October 2015) [Last accessed July 26, 2016].

66 Cameroon, Nigeria, South Africa, Benin, Chad, Ivory Coast, Guinea Bissau, Guinea Conakry, Kenya, Togo, Zimbabwe. See R Tapscott ‘Understanding Breast “ironing”: A Study of the Methods, Motivations and Outcome of Breast Flattening Practices in Cameroon’, Feinstein International Center (May 14, 2012) 2. See also, UN Report posted at www.dailymail.co.uk, (October 3, 2015). [Accessed July 26, 2016].

67 As above.

millions of girls are affected.⁶⁸ It is also amazing to note that in 58% of cases, the victim's mother is the abuser.⁶⁹ It is therefore a female violence; a female-to-female violence and many young girls in Africa are at risk of suffering from this violence.⁷⁰

Proponents of this practice argue that it is meant to combat child sexual abuse and exploitation since some men think that girls are sexually ready once their breasts begin to grow.⁷¹ Also, parents fear that their daughters may not complete their education if they become sexually active and become pregnant.⁷² Breast ironing is therefore, closely intertwined with the notions of femininity and female sexuality – proponents want girls to identify themselves as girls rather than women.⁷³ To say the least, this line of reasoning is outrageous because it is placing responsibility on the victims instead of trying to change the mentality of sexual predators. Besides, early sex, early pregnancies and promiscuity can be prevented through engaging in the reproductive sex education of young girls, not through breast ironing.

Thus, there is no gainsaying that breast ironing negatively affects the health of victims. The negative affects can be psychological or physical. Hence, breast ironing is a dangerous practice that can lead to health issues⁷⁴ such as breast infections, abscesses, swelling, burning, irritation, pimples around the breast, extreme pain, breast cancer, breast malformation, inhibition or prevention of successful breastfeeding, and the complete eradication of one or both breasts.⁷⁵ Victims also suffer psychological distress such as internalising blame, experiencing perpetual fear and shame, and social exclusion.⁷⁶

Therefore, because of the harmfulness of breast ironing, one is bound to think that it should be named and prohibited by the Maputo Protocol, so that State Parties can follow suit to prohibit and criminalise it. It is however worth noting that Cameroon has crimi-

68 JA Tchoukou, 'Introducing the Practice of Breast Ironing as a Human Rights Issue in Cameroon', (2014) *Journal of Civil and Legal Science*, University of Cape Town. Posted October 05, 2014 at www.omicsgroup.org/journal. [Accessed July 27, 2016].

69 See UN Report (n 66 above) 16.

70 L Iaccino, 'Breast ironing: from Britain to Cameroon Young Girls are Mutilated to Hide Puberty', posted March 3, 2016 at www.ibtimes.co.uk. [Accessed July 26, 2016].

71 Danpullo (n 63 above) 93.

See generally, the 2005 study conducted by the Cameroonian NGO "National Network of Aunties (RENATA) under the supervision of F Ndonko head of the German Development Agency's (GTZ) German-Cameroonian Health and AIDS programme.

72 G Pare & K Bayama's documentary on 'Breast ironing: The Victim's of Cameroon's Horrific Breast Ironing Tradition', Report, Posted August 19, 2015 at www.Vice.com. [Accessed July 26, 2016].

73 GL Eriksson (n 64 above) 47.

74 R J Sa'ah 'Cameroon Girls Battle Breast Ironing', (June 23, 2006 BBC News). That report states that 26% of Cameroonian girls undergo breast ironing at puberty. See especially, Sa'ah's interview with Professor A. Doh, a cancer surgeon on the dangers of breast ironing.

75 Danpullo (n 63 above) 93. See also Tapscott (n 66 above) ii

76 Tapscott (n 66 above) 17.

nalised breast ironing, though indirectly, in section 273-3 of the Penal Code. That section provides:

(1) Whoever involuntarily causes death by torture shall be punished with life imprisonment; (2) The penalty shall be imprisonment for from ten to twenty years where the torture causes a permanent deprivation of all or part of a limb, organ or sense.

This provision is a step in the right direction but ideally, it will be more efficient to name this woe in the Protocol.

IV. Trafficking of Girls and Women

Although the African Charter on the Rights of the Child⁷⁷ stresses the need to fight against child trafficking, the Maputo Protocol fails to address the trafficking of African girls and women. We recall that human trafficking is a heinous crime that needs continuous discourse and denunciation. Moreover, it is common knowledge that human trafficking (the illegal marketing of people for commercial purposes) is associated with domestic abuse, murder, fraud and prostitution. In fact, one report reveals that the most common form (about 79%) of human trafficking affecting women and girls is for the purpose of sexual exploitation, although they are also trafficked for forced labour and for other purposes.⁷⁸ Also, of the trafficked victims, about 1/3 are children and the number is increasing.⁷⁹

Furthermore, according to one survey at least 49% of African countries are affected by the problem of trafficking, either as a country of origin, transit or destination.⁸⁰ Besides, most of the victims who are sold into slavery and servitude are unsuspecting children and young women.⁸¹ Also, victims are said to be as young as fourteen years and are enticed with the promises of a better life abroad. However, once they arrive their destinations, their passports are confiscated and they are sold out to brothel owners.⁸² Another report confirms that many people including women and girls are victims of trafficking each year from Africa, and that these victims make up about 10% of those forced into sex work in their countries of destination.⁸³

77 See art 29.

78 See UNODC (2014) Report on Global Human Trafficking. Posted at www.unodc.org/document/data-analysis. [Accessed July 26, 2016].

79 As above.

80 UNICEF 'Trafficking in Human Beings, especially Women and Children, in Africa,' (2nd ed. 2005) Innocenti Research Center 8.

81 As above.

82 S Mwita 'Tanzania: Criminals Sells Young Girls Abroad' (Dar es Salaam Tanzania 29 March 2014) Report, Daily News 1-3.

83 BBC Report, 'Human Trafficking: The Lives Bought and Sold', (July 28, 2015). [Online] Available: <http://www.bbc.com/news/world-33592634> (July 18, 2017).

Trafficking is a crime that will not go despite the arsenal of legislations to fight it. Thus, necessitating incessant discussions, sensitisation and denunciation. Hence, the Cameroonian Law against Trafficking and Slavery in Persons provides:

Whoever engages even occasionally in the practice of trafficking in persons or slavery shall be punished with imprisonment for from ten to twenty years and with [a] fine of from 50,000 to 1,000,000 francs CFA.⁸⁴ Whoever engages even occasionally in the practice of trafficking in persons or slavery shall be punished with imprisonment for from fifteen to twenty years and with [a] fine of from 100,000 to 10,000,000 francs CFA where the;

- a) Offence is committed against a minor of fifteen years;
- b) Perpetrator is a legitimate, natural or adopted ascendant of the victim;
- c) Offender has authority over the victim or is expected to participate by virtue of his duties in the fight against slavery or in peace keeping;
- d) Offence is committed by an organised gang or an association of criminals.⁸⁵

Although generalised poverty is blamed for this practice, naming it in the Maputo Protocol, which was passed to protect the human rights of African women and girls will add a big voice to the global fight against this terrible crime perpetuated every day against African women and girls.

V. Early and Forced Marriages

The Maputo Protocol provides that ‘... [State Parties] shall enact appropriate national legislative measures to guarantee that: (a) No marriage shall take place without the free and full consent of both parties; (b) the minimum age of marriage for women shall be eighteen years’, thus addressing the obnoxious African custom of early and forced marriage. Moreover, the Protocol provides in its article 6 (a) that: ‘State Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage’. Among the acts deemed to promote this equality is the consent of both parties to their marriage⁸⁶ and that the minimum age for women shall be eighteen years.⁸⁷

Although the above provisions underline one of the strengths of the Protocol, we thought it necessary to include early and forced marriage in our discussion because this is one of the most devastating cultural woes that African women and girls endure, and which has refused to go away despite the concerted actions of many actors to combat it. Thus, the fight must continue through persistent denunciations.

Also, it is common knowledge that most early marriages are forced because children hardly know what they get into. Moreover, marriage should be for adults because of their

84 Sec. 4.

85 Sec. 5. See also Sec. 342 of the 2016 Cameroonian Penal Code.

86 See art 6(a) of the Maputo Protocol.

87 As above, Art 6(b).

ability to understand the responsibilities and the privileges that come with the institution of marriage – adults are better placed to grasp the ramifications of marriage.

Taking the example of Cameroon, even before the passing of the Maputo Protocol in 2003 and her ratification of the Protocol in 2012, the 1981 Civil Status Ordinance,⁸⁸ took care of the issues of marriage age and consent. That ordinance provides that ‘The consent of the spouses-to-be shall be given personally by the latter to the civil status registrar at the time of the celebration of the marriage.’⁸⁹ This section covers not just the consent of the bride but also that of the groom thus, implying that boys can also be victims of forced marriage. This is an important provision especially as regards ‘arranged marriages,’⁹⁰ which are quite frequent in African traditional societies. Boys are also victims of forced marriages through arranged marriages.

Thus, in conformity with the Protocol, Cameroon in a new Penal Code provides in section 356 titled, ‘Forced marriage’ thus:

- (1) Whoever compels any one to marry shall be punished with imprisonment of from five to ten years, and a fine of 25,000 francs to 1,000,000 francs CFA.
- (2) Where the victim is under the age of eighteen years, the punishment may not be less than two years imprisonment whatever the mitigating circumstance.
- (3) Whoever gives in marriage a boy or a girl under eighteen [years], shall be punished under the two last forgoing subsections.
- (4) Upon conviction, the court may deprive the offender of parental power and disqualify him from being the guardian or curator of any person for the time prescribed ...

The above provisions deal with early and forced marriage and reason dictates that the above penal provisions supersede the marriage age provided by the Cameroonian 1981 Ordinance, which states that ‘no marriage may be celebrated if the girl is a minor of fifteen years old or the boy of eighteen years old’.⁹¹ This ordinance has to be amended in this regard to match the provisions of the new penal code, which provides that eighteen years is the marriage age for both parties.⁹²

However, in societies where girls are enthroned to marriage at birth,⁹³ fifteen years might be a reasonable age to allow girls to get married but this is problematic in the sense that at fifteen, girls are expected to be pursuing their education instead of shouldering the responsibilities of marriage. In this respect eighteen years under the Maputo Protocol seems

88 Certain provisions of the 1981 ordinance were amended in May 2011.

89 See Sec. 64(1).

90 This occurs when the parties to a marriage are virtual strangers to each other prior to marriage. Their respective families do all arrangements without the participation or consent of the spouses to be.

91 See Sec. 52(1) of the 1981 Ordinance.

92 See Sec. 356(3).

93 For explanations on the betrothal of newborns, see AE Roth *Who Gets What and Why: The New Economics of Matchmaking and Market Design*, (An Eamon Dolan Book, New York, 2015) 71.

to be the most appropriate age for marriage since at that age, most girls and boys are deemed to be mature and can thus be ready for marital responsibilities.

As earlier mentioned, the new Cameroonian Penal Code prohibits the marriage of persons who are less than eighteen years.⁹⁴ Thus, to fight against early and forced marriage, the Cameroonian penal code provides that ‘where a girl less than eighteen years is given into marriage, the punishment upon conviction may not be reduced to less than two years, no matter the mitigating circumstance’.⁹⁵ It is however important to point out that despite all these provisions, early and forced marriage remains rampant. We will discuss the reason(s) behind this resistance, which can also be considered for inclusion in the Maputo Protocol.

Despite the fact that as of October 2015, about two thirds of the Member States of the African Union (AU) have ratified the Maputo Protocol, the problem of early and forced marriage persists. The UN estimates that fifteen million girls experience child marriage each year.⁹⁶ Thus, to continue the fight and notwithstanding the Maputo Protocol, African leaders joined other leaders from around the world to adopt the United Nations Sustainable Development Goals (SDGs) in September 2015, to end child marriage in the next fifteen years.⁹⁷

The above UN report pointed out that in sub-Saharan Africa, about 40 % of girls marry before the age of eighteen, and African countries account for fifteen of the twenty countries with the highest rates of child marriage.⁹⁸ Notably, 77 % of girls in Niger,⁹⁹ and over 60 % of girls in the Central African Republic and Chad marry before they turn eighteen.¹⁰⁰ Furthermore, it is thought that if concrete steps are not taken to implement the Maputo Protocol and all the other instruments and laws that have been enacted and ratified to prevent child marriage, the number of girls married as children will double by 2050, and Africa will surpass South Asia which for now has the highest number of child brides in the world.¹⁰¹

Early and forced marriage is indeed a human rights issue because girls who are subjected to this obnoxious practice are denied a range of very important human rights, such as the right to education and subsequently, the right to gainful employment.¹⁰² Also, early and forced marriage perpetuates the sexual abuse and exploitation of victims, and subjects them to multiple health problems such as numerous risky pregnancies, vagina fistula and even

94 See Sec. 356(3).

95 As above Sec. 356 (2).

96 Reported by Stirton (n 51 above).

97 As above. See also the African Union ‘The Republic of Zimbabwe Launches AU Campaign to End Child Marriage in Africa’, (2 August 2015). Posted at <http://sa.au.int/en/content/republic-zimbabwe-launches-au-campaign-end-c> [Last accessed July 26, 2016].

98 UNICEF Report, “Ending Child Marriage: Progress and Prospects”, (2014), <http://data.unicef.org>. Posted November 15, 2015. [Last accessed July 26, 2016].

99 As above.

100 UNICEF Report (n 98 above).

101 Stirton (n 51 above).

102 Danpullo (n 63 above) 82-84.

diseases such as HIV and AIDS, and other sexually transmitted diseases (STD). This is so especially where they are in a polygamous marriage as it is the case in many African traditional societies.¹⁰³ Apart from the above mentioned health issues, victims are also subjected to sexual and domestic violence. More so, early and forced marriage has been recognised as a major impediment to regional development and prosperity in Africa¹⁰⁴ because victims constitute a big lose to their communities and countries in terms of the social, economic and political contributions they could furnished if they were educated and got involved in gainful economic activities.¹⁰⁵

VI. Widow Rites and Widow Inheritance

The Maputo Protocol in its article 20 entitled Widows' Rights, provides:

State Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

- a) That widows are not subjected to inhuman, humiliating or degrading treatment;
- b) That a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;
- c) That a widow shall have the right to remarry, and in that event, to marry the person of her choice.

What is of interest to us here are subsections (a) and (c) which prohibit widow rites and widow inheritance because these are one of the most degrading and humiliating cultural woes that African women endure after they lost their husbands. In accordance with the Maputo Protocol most State Parties¹⁰⁶ have prohibited widow rites and inheritance but these still persist. The next step will be to name and criminalise these practices by State Parties because it is not enough to prohibit them- these practices should carry a punishment in terms of imprisonment and fines.

The fight against widow rites and widow inheritance go hand in hand with the fight against the negative effects of the payment of customary bride price because proponents of these outrageous practices base their arguments on the payment of bride price at marriage. They argue that if a man dies his widow should pass to his next-of-kin: his brother or eldest

103 As above.

104 See The African Union's 50-Year Action Plan for Development – Agenda 2063.

105 As above.

106 In Cameroon for example, although Customary Law is judicially recognised by virtue of S. 27 of the Southern Cameroon's High Court Law, 1955, S. 27 (1) of this law provides for the recognition of customary practices that are not repugnant to natural justice, equity and good conscience. There is no doubt that most courts will hold that widow rites and inheritance do not qualify for judicial recognition.

son.¹⁰⁷ This is because under most customary laws, the next-of-kin inherits a deceased husband's property. Thus, because bride price was paid to the parents of the widow at marriage, she has to be inherited together with the rest of her deceased husband's property. Furthermore, if a widow re-marries out of her deceased husband's family, or goes back to her family, under most customary laws, she will be required to repay the bride price¹⁰⁸This is so irrespective of the duration of the marriage.

Another offensive practice is the traditional/religious rites that widows are forced to undergo. As a stepping-stone to the infliction of inhuman acts on a widow under the guise of tradition/religion, a deceased husband's relatives start by accusing his widow of having killed him. And then move on to perpetuate traumatising rites on the widow. For example, forcing a widow to wash the corpse of her husband and drink the water in order to prove that she was not responsible for his death.¹⁰⁹ Hence, apart from dehumanising and degrading a widow, these rites contribute in the spread of Ebola and other diseases.¹¹⁰ In the same vein, a widow may be forced to have sex with her brother-in-law. This practice contributes in no small way in the spread of sexually transmitted diseases, and HIV and AIDS.¹¹¹

Also, most widows are asked to lie on the floor for a number of days signifying their "fall from grace," and also undergo a forced routine of crying. Likewise, they are not allowed to bath for a number of days, touch others (in order not to defile them), nor dress in particular colours. They also have to stay home for a fixed period of time.¹¹² In all these, the widow's wellbeing is compromised. Furthermore, at the end of the widowhood period, a widow is taken to a stream at mid-night and forced to undergo a 'cleansing' ritual with a bid to 'drive away' the spirit of her deceased husband so that it should not harm her. Thereafter, her cloths are burnt and she is forced to walk back home naked.¹¹³

It is amazing that widows are not spared even in the religious domain as religious misconceptions are imposed on them in the form of widow rites. In this regard, widows are forced to stay isolated during widowhood.¹¹⁴ They are expected to stay in their rooms and avoid every contact with the outside world. Even in their homes, they are not allowed to

107 Danpullo (n 36 above) 69.

108 Danpullo (n 36 above) 69.

109 Fox health News 'From Cleaning Corpses to Sex with Strangers, Widow Rituals Fuel Disease in Africa', Posted at www.foxnews.com (June 22, 2016) [Accessed July 26, 2016].

110 K Brewer 'Widows Rights International, Marking the International Widows Day', Posted at www.globalhealthnow.org (June 23, 2016 Thomson Reuters Foundation). [Accessed July 27, 2016]

111 As above.

112 'Widowhood Rites in Nigeria', posted at www.genderacrossborders.com (June 25, 2009) [Accessed August 06, 2016]. See generally, T.O George et al, 'Socio-Demographic Characteristics and Observance of Widowhood Among the Aworis of Ogun State [of Nigeria]', *Mediterranean Journal of Social Sciences*, Vol. 7 No. 4, July 2016 ISBN: 2039-2117, Posted at www.academia.edu [Accessed July 27, 2016]

113 As above.

114 Four months ten days.

talk to anybody, to cook, to stay in the courtyard, view the moon at night or go about their normal business during the day. Most obnoxious is the fact that widows are allowed to bath only once a week (Fridays), and are required to wear talismans as a protection against harm by the spirit of their late husbands.

Thus, to air out her frustrations, one advocate of widows' rights presents the situation as follows: "If [a widow] accept[s] these inhumane and degrading rituals, [she] run[s] the risk of disease [physical and/psychological]. If [she] [does not], [she is] condemned for not saying goodbye to [her] husband, and [is] abused and ostracised." – "Widows are damned if they go through the rituals and damned if they [do not]."¹¹⁵

Most disheartening is the fact that husbands who lose their wives are not forced to undergo these so-called rites. Denouncing and combatting widow inheritance and widow rites should therefore be continuous and relentless in order to protect the human rights of women.

C. Conclusion

This article demonstrates the extent to which the Maputo Protocol has addressed the different cultural woes that African women and girls experience. While upholding that the Protocol is a giant step towards the protection of the human rights of African women and girls, there is still room for improvement. This improvement can be achieved by naming in the Protocol some of the most obnoxious cultural/religious practices which African women and girls endure.

The payment of customary bride price is at the centre of most of the cultural woes that African women experience including widow inheritance, widow rites and the African woman-to-woman marriage, hence the need for regulation. This is so though some African countries have tried some regulation, more need to be done. We propose regulation because any attempt to abolish customary bride price might meet with fierce resistance because proponents argue that it 'stabilises' traditional marriages. Instead, we propose that the payment of customary bride price should be regulated to make it 'a mere unifying factor' between the families of a groom and that of his bride. However, this will involve the exchange of gifts between the two families. If this happens, a husband will not be able to say 'he bought his wife' just because he paid bride price to her parents. Consequently, a husband and his relatives will no longer consider his wife as their 'property' who has to undergo some obnoxious rites and be inherited after the husband passes away.

As regards African woman-to-woman marriage, respecting the rights of vulnerable victims to education can adequately address this problem. For example, if the victims are educated, they will be empowered to know that marriage is not an employment. With education, they can obtain gainful employment and become economically autonomous. Then, the wealthy 'women husbands' will have to look for servants and mates to serve them instead

115 Brewer (n 110 above).

of mortgaging the future of young girls just because they come from economically disadvantageous families.

Overall, we are convinced that naming in the Protocol the various harmful practices discussed will not only extend the sphere of the coverage of the Protocol, but will also facilitate its implementation. Consequently, the Maputo Protocol will serve as a more comprehensive human rights protection instrument for African women and girls.