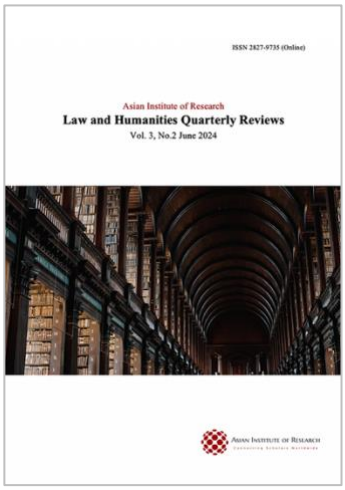

Law and Humanities Quarterly Reviews

Essama-Mekongo, P. Capacity to Marry: The Minimum Age for Marriage in Cameroon and its Compliance with International Standards. *Law and Humanities Quarterly Reviews*, 3(2), 60-71.

ISSN 2827-9735

DOI: 10.31014/aior.1996.03.02.120

The online version of this article can be found at:
https://www.asianinstituteofresearch.org/

Published by:
The Asian Institute of Research

The Asian Institute of Research Law and Humanities Quarterly Reviews is a peer-reviewed International Journal of the Asian Institute of Research. The journal covers scholarly articles in the interdisciplinary fields of law and humanities, including constitutional and administrative law, criminal law, civil law, international law, linguistics, history, literature, performing art, philosophy, religion, visual arts, anthropology, culture, and ethics studies. The Law and Humanities Quarterly Reviews is an Open Access Journal that can be accessed and downloaded online for free. Thus, ensuring high visibility and increase of citations for all research articles published. The journal aims to facilitate scholarly work on recent theoretical and practical aspects of law.

ASIAN INSTITUTE OF RESEARCH
Connecting Scholars Worldwide

The Asian Institute of Research
Law and Humanities Quarterly Reviews
Vol.3, No.2, 2024: 60-71
ISSN 2827-9735

DOI: 10.31014/aior.1996.03.02.120

Capacity to Marry: The Minimum Age for Marriage in Cameroon and its Compliance with International Standards

Pierrette Essama-Mekongo[1]

[1] Senior Lecturer in Law, Faculty of Laws and Political Science, University of Yaounde II, Cameroon

Abstract
The Preamble of the Constitution of Cameroon Indent 17 affirms the Nation's aim to protect and promote the family which is the natural foundation of human society as well as protecting women and the young. Families generally start with marriage. Protecting the family therefore implies protecting marriage which goes by setting rules for its validity and maintenance. For a marriage to be valid, parties must fulfil formalities and have capacity. Capacity to marry determines whether an individual may legally be entitled to get married or not. The minimum age for marriage is a key component of capacity to marry as no marriage is valid if contracted under that age. This stems from the fact that age determines other criteria such as the capacity to give valid consent and to comprehend marriage's commitments. Setting the minimum age for marriage is a requirement enshrined in all relevant international human rights instruments ratified by Cameroon. The question is as to whether Cameroon's domestic law on marriage complies with international standards. In order to tackle that question, the exegetic method has been used to extract the contents of the relevant international and national instruments, analyse and interpret them in order to determine whether and, if so, to what extent the Cameroonian law on marriage complies with international standards relating to the minimum age for marriage. It is found out that while Cameroonian law complies with some aspects of international standards, it is still lacking in others and that, the only solution is to amend the existing law so that it may fully comply with international precepts.

Keywords: Capacity to Marry, Minimum Age for Marriage, International Standards, Cameroonian Law

1. Introduction

The minimum age for marriage is a human right issue that has been addressed by several human rights instruments. The main objective to set the minimum age for marriage is to ensure that, in as much as the family is the basic unit of society and is started ordinarily through marriage, early marriage, which accounts for numerous health issues and societal ills such as economic and sociological plagues, be prohibited (Maswikwa et al., 2016). Lawmakers worldwide agree on the fact that early marriage or child marriage is to be prohibited for the holistic well-being of society in general. Therefore, from the 1948 Universal Declaration of Human Rights (UDHR) to the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (the Convention on Consent and Minimum Age for Marriage) to the 1979 Convention on the Elimination of Discrimination against Women (CEDAW) and the 1989 Convention on the Rights of the Child (CRC) at the international level, to regional instruments such as the 1990 African Charter of the Rights and Welfare of Children (AfCRWC) and the 2003

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol), the minimum age for marriage has been clearly defined. Most countries in the world have adopted laws that comply with the international standards set in those instruments. Even if it is to be noted that such standards are still challenged by religious and socio-cultural beliefs and practices worldwide (Owohunwa, 2018; El Kobrousli, 2019; Zahe, 2013; Human Rights Watch, 2014; Child Frontiers Ltd, 2015). Yet, there are still countries where the internal law does not clearly indicate the minimum age for marriage or still allows under-age marriage. Among such countries is Cameroon which, even after two attempts to legislate on marriage still fails to clearly determine the minimum age for marriage while the tentative number of years tendered as the minimum age obviously does not comply with international standards. The relevant piece of legislation on capacity to marry dates as far back as 1981. It will clock 43 years on 29 June 2024 and the situation is at a standstill even after the ratification of relevant international human rights instruments that provide otherwise. In Cameroon, section 52(1) of the law organising marriage sets out the minimum age for marriage to be 15 years for girls and 18 years for boys. Yet, the same provision continues by stating that marriage may be celebrated for people under that age provided leave is obtained from the President of the Republic. Thus, the question arises as to whether the minimum age for marriage in Cameroon complies with international human rights standards that prescribe countries to define the minimum age for marriage and to prohibit marriages for persons under 18 years. This paper sets out to determine the compliance of Cameroonian law with these international human rights precepts. The first question that needs to be answered is whether Cameroon has clearly set a minimum age for marriage for, even as a number is stated, a caveat is provided that allows the President of the Republic to authorise marriage under that age. The second question is to determine whether this caveat nullifies the law's attempt to set the minimum age for marriage thereby violating relevant international human rights standards. The third question is whether the distinction that the Cameroonian law draws between the minimum age for marriage for girls and boys respects international commitments. These questions shall be examined in three steps: firstly, by looking at the international provisions relating to the minimum age for marriage; secondly, by discussing the minimum age for marriage as provided for under Cameroonian domestic law; and thirdly, by assessing the latter's compliance with international human rights standards while highlighting any challenges. Proposals to remedy those shall be stated in the conclusion.

2. The minimum age for marriage in international human rights law

The international human rights law referred to here consists of the provisions of international and regional human rights instruments relating to the minimum age for marriage, viz: the Universal Declaration of Human Rights, the Convention on Consent and Minimum Age for Marriage, the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

2.1. In the Universal Declaration of Human Rights

The UDHR is the first international instrument that mentions the legal age for marriage even if it does not state it. It provides in article 16(1) that "men and women of *full age*, without any limitation due to race, nationality or religion, have the right to marry and to found a family" (emphasis added). The UDHR only mentions the fact that spouses-to-be need to be of "full age". "Full age" may be ordinarily defined as a period of human life which is measured by years from birth and that is marked by a certain degree of mental or physical development to which is ascribed some responsibility and capacity. It is also considered as the age of discretion or the age of consent. Full age is legally acknowledged with minimum age for some activities for which individuals incur liabilities. Legal capacity is strongly tied to what authorities in a State consider as being the state of mental and physical development that qualifies the individual to undertake and own the consequences of their acts and deeds. For example, States may situate the minimum age for drinking or voting or, as in this case, contracting marriage. In fact, as article 16(2) of the UDHR states that "marriage shall be entered into only with the free and full consent of the intending spouses", it therefore seems logical that the law should set a minimum age that guarantees that consent to enter into such a contract is given by a person legally regarded as capable of giving such consent. What is even more important is that, although consent does not mean being fully aware of all the legal consequences of marriage, it does nevertheless require that there should be some knowledge of the fact that being married entails

some basic duties such as living together and usually leads to building a family. Therefore, even if no age is stated in the UDHR, the term "of full age" is a clear indication that under-age persons are not entitled to get married.

2.2. In the Convention on Consent, Minimum Age for Marriage and Registration of Marriages

Next, on the international level is the Convention on Consent to Marriage. It provides in its article 2 that State Parties to it "shall take legislative action to specify the minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses." Here, the international community seems to have taken a step backwards from the provisions of the UDHR by not mentioning the requirement that spouses-to-be should be persons of "full age". Instead, it is simply provided that each country shall enact legislation that will state the minimum age for marriage. This omission may imply that States may decide of a minimum age that does not correspond to "full age" or that "full age" may simply be any age determined by the Member State as being the minimum age. And, even if one were to assume that the precepts of the UDHR would still operate and that, the minimum age for marriage is impliedly "full age", this Convention goes further by providing for an exception that definitively blurs the minimum age for marriage. In effect, it provides that "*no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age*, for serious reasons, in the interest of the intending spouses" (emphasis added). Hence, it is possible that marriage may be allowed for people under any minimum age freely determined by a Member State under its domestic law, provided a competent authority grants a waiver. This legal instrument might therefore be held to be going against the UDHR as it destroys the grounds laid by the latter on the minimum age for marriage at two levels: first, by not providing for the minimum age for marriage, and second, by giving room for derogation from any domestic freely determined age.

2.3. In the Convention on the Rights of the Child

It should be noted from the onset that the CRC does not mention the term marriage nor its minimum age. It might seem surprising, yet, at the same time, it is fully understandable as marriage is not meant for children. Therefore, it may not be mentioned in a legal instrument relating to the rights of children. At the same time though, one would have expected it to be mentioned there in order to ensure that children enjoy their rights unfettered by marriage which is an adulthood issue. In either case, the minimum age for marriage is not mentioned in the CRC. Nevertheless, the CRC contains provisions that sustain the idea that full development and rights of children may not be fully attained in wedlock. In effect, the Preamble of the CRC recalls that "in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance". The Preamble goes further by stating that Member parties are "recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". Then, it goes on by recalling that the need to extend particular care to the child was stated in the 1924 Geneva Declaration of the Rights of the Child and in the 1959 Declaration of the Rights of the Child, the 1966 International Covenant on Civil and Political Rights (in particular in articles 23 and 24), the 1966 International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and any other relevant instruments of specialised agencies and international organisations concerned with the welfare of children. It further states that "bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'". All of these proclamations point to the conclusion that starting a family is not in a child's capacity as the child still needs special care. They may thus be used as grounds for protecting children from early marriages. Even the Preamble's declaration that "the importance of the traditions and cultural values of each people for the protection and harmonious development of the child" may not be taken to allow the implementation of traditions and customary rules favourable to child marriage.

Apart from the Preamble, there are several provisions in the CRC that help militate for a minimum age for marriage. In effect, article 1 of the CRC defines a child as: "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". It may thus be inferred from this provision that a person under eighteen years may not be allowed to get married and that the minimum age for marriage is

eighteen years. Even if it is to be noted that the CRC leaves room for countries to provide for majority below that age which may result into a lower minimum age for marriage.

The CRC further states in article 4 that States Parties are "to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised therein.". Therefore, if State Parties are to ensure that children attain "the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health" which is provided for in article 24(1) or if the child is to be protected from all forms of sexual exploitation and sexual abuse as per article 34(1) as well as from "abduction of, the sale of or traffic in children for any purpose or in any form" under article 35, then, providing for a minimum age for marriage is key. To this may be added the duty to protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare which is contained in article 36. These are the main provisions which, when read together, may serve to advocate and hold States into setting a clear minimum age for marriage that will ensure promotion, protection and respect for these children's rights which may be infringed by child marriage and betrothal as well as elopement which are all multiple forms for practicing child marriage (Mwakyambiki, 2023).

Again, if States Parties are to ensure that a child who is capable of forming their own views may express those views freely in all matters affecting them and that these views are given due weight in accordance with the age and maturity of the child as per article 12(1) of the CRC, then, a minimum age for marriage must be set. It has been established that children who get married do not do so voluntarily (Mwakyambiki, 2023). Then, under article 19(1), States Parties are required to take "all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse". In the case of child marriage, when a young girl is being sent to marriage, she is likely to undergo physical and sexual violence (Lebni et al., 2023; Suyanto, 2023; Anggreni et al. 2023). Article 27(1) on the child's right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development and article 28(1) on the right to education are also sufficient grounds to advocate for a clear minimum age for marriage being set as child marriages account for a decrease in those areas.

Lastly, in General Comment 4 paragraph 9, the Committee on the Rights of the Child established by the CRC in its article 43, clearly stipulates that States Parties must ensure that specific legal provisions set a minimum age for sexual consent and marriage that closely reflect the recognition of the status of children. Under paragraph 20, the Committee holds that early marriage and pregnancy are significant factors in health problems related to sexual and reproductive health, including HIV/AIDS as also expounded by Ramnath (2015). Besides, there are also non-health-related concerns linked to child marriage: children who marry, especially girls, often leave the education system and are marginalized from social activities (Mwakyambiki, 2023). As married children are legally considered as adults, they are deprived of all the special protection measures set forth in the CRC for children.

2.4. *In the Convention on the Elimination of Discrimination against Women*

Article 16(2) of the CEDAW provides that "the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage". The implications of this provision are that child marriage is strictly forbidden. Consequently, if a marriage or betrothal ceremony involves a child, it shall be deemed null and void. Article 16(2) goes on to urge that laws be adopted to set the minimum age for marriage. This leads to the understanding that that minimum age for marriage will be eighteen years which is the age at which a person may no longer be considered a child but an adult in the eyes of the law.

This is the purport of the General Recommendation 21, paragraphs 36-39 issued by the Committee on the Elimination of Discrimination against Women in 1994. The Committee therein held that "when men and women marry, they assume important responsibilities". As a consequence, "marriage should not be permitted before they have attained full maturity and capacity to act". And that "according to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is

impeded. As a result, their economic autonomy is restricted". These were the same findings shared by Bakhtibekova (2014) and Kohno et al. (2019).

2.5. *In the African Charter on the Rights and Welfare of the Child*

It is article 21(2) of the AfCRWC titled "Protection against Harmful Social and Cultural Practices" that clearly provides that "child marriage and the betrothal of girls and boys shall be prohibited" and that effective action, including in the form of legislation must be taken to specify the minimum age for marriage to be 18 years. While article 21(1) enjoins States Parties to the Charter to take all appropriate measures to eliminate harmful social and cultural practices that affect the welfare, dignity, normal growth and development of the child particularly those customs and practices prejudicial to the health or life of the child; and those customs and practices discriminatory to the child on the grounds of sex or other status. This Charter clearly links child marriage to "harmful social and cultural practices" and therefore requires that States Parties enact laws that set the minimum age for marriage at 18 years old.

2.6. *In the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*

Article 6 of the Maputo Protocol titled "Marriage" clearly provides that States Parties must ensure that women and men have equal rights in marriage and are regarded therein as equal partners. It also requires them to enact appropriate national legislative measures to guarantee that no marriage takes place without the free and full consent of both parties and, most importantly, in article 6(b) that, "the minimum age of marriage for women shall be 18 years". No child marriage is therefore permitted as the minimum age for marriage is clearly stated to be 18 years and States are urged to enact laws to that effect. It is to be noted that the Maputo Protocol only mentions women. This is attributable to the fact that it is a Protocol devoted to the rights of women. Besides, research clearly points to the fact that, more often than not, it is the girl child who is dragged into marriage as compared to her male counterparts (Mwakyambiki, 2023).

After having examined the international legal instruments on the minimum age for marriage, it is now time to determine whether Cameroonian law sets a minimum age for marriage so as to fulfil its international undertakings under the aforementioned international human rights instruments (with the notable exception of the Convention on Consent to Marriage which Cameroon has not ratified).

3. The minimum age for marriage in Cameroon

Even though Cameroon is a country where two legal systems coexist with very little harmonisation in the private law domain (Essama-Mekongo, 2024), there is a national legal instrument that governs conditions for the celebration of a valid marriage: the 1981 Ordinance on Civil Status Registration which provides in section 52(1) that "no marriage may be celebrated" "if the girl is a minor of 15 years old or the boy of 18 years old, unless for serious reasons a waiver has been granted by the President of the Republic". This means that the minimum age for marriage in Cameroon is slated at 15 years for the girl and 18 years for the boy. Yet, this is not even fully embedded as there is a caveat. In effect, the provision goes on to stipulate that waiver may be granted by the President of the Republic for serious reasons. This results in girls and boys being likely to be married under the indicated ages. Therefore, one may rightly conclude that there is, in fact, no minimum age for marriage in Cameroon. Apparently, the law provides that the minimum age for marriage is 15 for the girl and 18 for the boy, but it also provides that it is possible to marry under that age with the authorisation of the President of the Republic, thus casting doubt on whether, if at all, Cameroon has provided for a minimum age for marriage.

This ambiguous position of Cameroonian law may be attributable to some traditions and customs (Menkiawi, 2023). Meanwhile, part of the international undertakings is to not let harmful traditions and customs deprive children, both girls and boys, from their rightful childhood by allowing them to get into wedlock before they are of full age, that is, before they attain the age of 18 years as per article 16 of the UDHR, the Preamble to the Convention on Consent to Marriage, article 16(2) of the CEDAW, article 21 of the AfCRWC and article 6 of the Maputo Protocol as previously discussed.

The Preamble to the Convention on Consent to Marriage recalled that the General Assembly of the United Nations (UN) declared by Resolution 83 (IX) of 17 December 1954, that certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the Principles set forth in the Charter of the UN and in the UDHR, and reaffirmed that all States should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, inter alia, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary.

Article 21(1) of the AfCRWC provides on its part that States Parties must take all appropriate measures to eliminate harmful social and cultural practices, in particular: "(a) those customs and practices prejudicial to the health or life of the child; and (b) those customs and practices discriminatory to the child -on the grounds of sex or other status". Subsection 2 goes further by providing that "child marriage and the betrothal of girls and boys shall be prohibited". Hence, "effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years".

Having visited provisions relating to the minimum age for marriage in both the international and national legal frameworks, it becomes necessary to assess the compliance of Cameroon's domestic provisions on the minimum age for marriage with international standards set in the relevant international human rights instruments.

4. Compliance of Cameroon's minimum age for marriage with international human rights law

Cameroon's law is to be examined in the light of relevant international human rights instruments to determine whether it complies with the international standards they set in relation to the minimum age for marriage, that is, whether a minimum age for marriage is set by the law, whether that age is 18 years, whether the law establishes gender equality on the issue and whether there are avenues to sanction any violation of the law.

4.1. Whether Cameroon prescribes a minimum age for marriage

The first issue to examine is whether Cameroonian law prescribes a minimum age for marriage as specifically required under international law. In effect, article 21(2) of the AfCRWC provides that "effective action, including in the form of legislation must be taken to specify the minimum age of marriage to be 18 years" while the CEDAW provides in article 16(2) that "all necessary action, including legislation, shall be taken to specify a minimum age for marriage". Then, article 6 of the Maputo Protocol requires States Parties to enact appropriate national legislative measures to guarantee that "the minimum age of marriage for women shall be 18 years". In addition, even though the CRC does not specifically mention marriage, General Comment 4 paragraph 9 of the Committee on the Rights of the Child clearly states that States parties must ensure that specific legal provisions set a minimum age for sexual consent and marriage. Therefore, it may be rightly held that the CRC also requires States Parties to enact laws that set the minimum age for marriage. Though not operative, as Cameroon did not ratify it, it is still worth mentioning that even article 2 of the Convention on Consent to Marriage also requires State Parties to take legislative action to specify the minimum age for marriage.

Cameroon, through section 52(1) the 1981 Ordinance on Civil Status Registration provides that no marriage may be celebrated if the girl is a minor of 15 years old or the boy of 18 years old. This prima facie appears to be a prescription of the minimum age for marriage in Cameroon in compliance with international requirements as contained in duly ratified relevant international human rights instruments.

4.2. Whether the minimum age prescribed complies with international standards

After having determined that Cameroon has prescribed a minimum age, the second step is to examine whether that minimum age complies with international standards contained in the relevant international instruments. Here, two aspects come into play: first, the minimum age itself, and second, whether it is the same for girls and boys.

4.2.1. On the minimum age for marriage

The UDHR provides in its article 16(1) that "men and women of *full age*… have the right to marry" (emphasis added). It does not specify the exact age that would be considered "full age". It might only be subject to interpretation by States' Parties which may lead to different views on the matter and thus leaves the door open for each one to determine a different age as an age that may be considered "full". This may mostly happen on the grounds of traditions and culture as previously discussed (Bakhtibekova, 2014; Kohno et al., 2019; Cislaghi et al., 2019). However, when read in conjunction with the CRC, little doubt is left as to what "full age" means. It means, as per article 1 of the CRC, a person who has attained the age of 18 years old.

Article 21(2) of the AfCRWC is clear on the fact that "legislation must be taken to specify the minimum age of marriage to be 18 years" while article 6 of the Maputo Protocol also sets the minimum age for marriage at 18 years. Besides, article 16(2) of the CEDAW provides that "the betrothal and the marriage of a child shall have no legal effect". Though not clearly stated, when read in line with the CRC, as recommended by the General Comment 4 of the Committee, this refers to a person who is above 18 years of age in accordance with article 1 of the CRC. Even if it should be noted that the same provision stipulates that States parties may provide for majority to be attained earlier.

It therefore appears that Cameroon does not fulfil its international undertakings under these international human rights instruments as concerns girls in so far as section 52(1) provides that they may get married at 15 years old while for boys, standards are complied with as their minimum age for marriage is 18 years old. Yet, had Cameroon ratified the Convention on Consent to Marriage, it might have been possible to hold otherwise. In effect, that Convention does not specify a minimum age for marriage even if it requires States Parties to take legislative action to specify the minimum age for marriage as it does not give any indication whatsoever as to what that age should be.

Then, even as Cameroon set the minimum age for marriage, even though it does not comply with the relevant international instruments, section 52(1) of the 1981 Ordinance on Civil Status Registration goes further by stating that spouses-to-be may marry under that age provided a waiver has been granted by the President of the Republic for serious reasons. As earlier discussed, this creates confusion as to whether a minimum age for marriage has really been defined in Cameroon as it clearly gives room for marriage to be celebrated for girls and boys under the stated age. Obviously, this further takes Cameroon far from the requirements of international instruments to which it is party which do not allow any derogation from the requirement that the minimum age for marriage is 18 years old. Again, had Cameroon ratified the Convention on Consent to Marriage, the situation would have been different. In effect, article 2 of that Convention provides that no marriage may legally be entered into by any person under the age specified by national legislation, "except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses". It would seem the Cameroonian lawmaker simply copied and pasted this provision even if it did not ratify the said Convention. Cameroonian law would have therefore been found compliant to the Convention on Consent to Marriage.

The second aspect of international standards is the requirement of non-discrimination in setting the minimum age for marriage.

4.2.2. On non-discrimination between girls and boys as to the minimum age for marriage

Cameroon has failed in setting the minimum age for marriage according to relevant international standards only as concerns girls. In effect, it provides for different minimum ages for marriage: 15 years for the girl and 18 years for the boy. It means, as discussed earlier, that for boys, the minimum age is complied with but for girls, it is not. This provision epitomises gender inequality as regards capacity to marry, an issue lengthily discussed by Mwakyambiki (2023) in the Tanzanian context. This obviously amounts to "discrimination against women" which is defined by article 1(f) of the Maputo Protocol as "any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women […] of human rights and fundamental freedoms in all spheres of life". International human

rights instruments do not make any difference between genders. In fact, equal treatment of both women and men is clearly enshrined therein. In this vein, the CEDAW Committee General Recommendation 21 on equality in marriage and family relations provides in its paragraph 38 that, provisions in some countries that set different ages for marriage for women and men "should be abolished" "as such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial" or as gathered from Mwakyambiki's (2023) account, sometimes, girls are married younger to prevent negative influence, also, because they are deemed able to bear children and take care of them and of a house at that age while men must prove they can provide for their family before they are allowed to have any.

General Comment 4 paragraph 9 of the Committee on the Rights of the Child clearly states that the minimum age for marriage should be the same for girls and boys in accordance with article 2(1) of the CRC which provides that rights set forth in the Convention must be respected and ensured to each child without discrimination of any kind, irrespective, among other things, of the child's sex. In its paragraph 20, the Committee strongly recommends States Parties to review and reform their laws and practice to increase the minimum age for marriage to 18 years "for both girls and boys".

The disparity in the minimum age for marriage between girls and boys marks the Cameroonian law's failure to keep with international standards whereas the Constitution of Cameroon has, since its 2 June 1972 version as repeated in the 1996 version, embedded the principle of non-discrimination as the first principle in its Preamble thus: "all persons shall have equal rights and obligations". The 25th Principle on its part, is also against discrimination as it provides that "the State shall guarantee all citizens of either sex the rights and freedoms set forth in the Preamble of the Constitution". The same disparity and discrimination also exist in other countries such as South Africa where girls may marry between 12-17 years while boys may marry between 14-17 years (Kotze, 2020; Mafhala, 2015) and in Tanzania where the law provides for 15 years for girls and 18 years for boys just like in Cameroon and, where in practice, girls as young as 12 are being married to men of at least twice their age (Mwakyambiki, 2023). In Cameroon, a survey has determined the percentage of girls who marry before the age of 18 to be 61% (UNFPA, 2004).

After having visited the substantive provisions relating to the minimum age for marriage in Cameroon, it is necessary to inquire whether any sanctions are attached to disrespect of the law as an essential measure to ensure compliance with international standards relating to the minimum age for marriage.

4.3. Whether there are sanctions provided for violations of the law

A right that is not backed by sanctions for its violations, is no right at all. In effect, if no sanction may be meted on an infringer, it means that no reparation is possible and, if there is no avenue for reparation, then the right cannot be fulfilled. Therefore, if it may not be fulfilled, it may as well not exist. In this respect, article 6 of the Maputo Protocol provides that States Parties should enact appropriate national legislative measures to guarantee that no marriage takes place if the parties have not attained the minimum age for marriage which is 18 years. Article 21(2) of the AfCRWC provides that "child marriage and the betrothal of girls and boys shall be prohibited" and article 16(2) of the CEDAW clearly states that "the betrothal and the marriage of a child shall have no legal effect". It can thus be gathered from the foregoing provisions that the sanction for the marriage of a person that has not attained the minimum age for marriage is nullity. In Cameroon, the 1981 Ordinance on Civil Status Registration follows that stance and provides in section 52(1) that "no marriage may be celebrated" when the parties are under the prescribed age. This means that, once identity documents inform that any of the parties to the marriage is under age, no civil status registrar may proceed with the celebration of marriage. And that, even if parties undergo a ceremony of marriage and it is later found out that any of them was under age, such a marriage is null and void. Cameroonian law therefore complies with the relevant international human rights instruments through this provision and thereby fulfils its international undertakings as concerns this aspect of the minimum age for marriage.

It proves useful to consider the standing of international law in Cameroon's legal order as an indicator of its weight and influence on domestic lawmaking.

4.4. On the standing of international standards under Cameroonian law

The general principle is that States Parties to international treaties and conventions must respect them and, as concerns human rights, their international undertakings are threefold, namely, to respect, protect and fulfil human rights (De Schutter, 2010). Yet, for that to happen, international standards need to be incorporated into States Parties' internal legal orders. Such incorporation obeys either the monist or dualist approach (Frimpong Oppong, 2006). Cameroon opted for the monist approach and, hence, the Constitution provides in article 45 that "duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement". There is no need for a reenactment of the same as domestic laws through domestic processes for them to become part and parcel of the law in Cameroon. It suffices that authorisation to ratify the said treaties and conventions is adopted by the Parliament. Therefore, all international instruments ratified by Cameroon rank higher than any domestic law which must comply with them. Hence, any law that does not is unconstitutional and should not be applied. However, means to control and cure laws' unconstitutionality are not available to the public at large but only to some categories of people at a given time in the lawmaking process. Therefore, in those aspects where the 1981 Ordinance on Civil Status Registration does not comply with international standards as contained in the relevant international human rights instruments, there is virtually nothing that can be offered as cure.

In effect, it is not possible to have direct control of constitutionality in Cameroon, that is, to have a court of law declare that the law is unconstitutional. Unconstitutionality of internal laws may only be checked by the Constitutional Council as per article 46 of the Constitution and section 2 of the Law relating to the Organisation and Functioning of the Constitutional Council (the Law organising the Constitutional Council). According to article 47 of the Constitution and section 3(1) of the Law organising the Constitutional Council, the Constitutional Council's mandate is, *inter alia*, to give a final ruling on the constitutionality of laws, treaties and international agreements. Key here is the fact that the control of constitutionality provided for here may not help cure the unconstitutionality of the 1981 Ordinance on Civil Status Registration. In effect, the Constitutional Council may only control the constitutionality of laws pending their adoption. Nothing is provided for in the case where a law that has already been enacted does not conform with the Constitution. On the other hand, section 19(1) of the Law organising the Constitutional Council provides that only the President of the Republic, the Speaker of the National Assembly, the President of the Senate, one third of parliamentarians and one third of senators and Presidents of Regional councils may seize the Constitutional Council with a petition for the control of the constitutionality of "*laws awaiting promulgation*" (emphasis added). There is no other provision as to the control of constitutionality of laws which means that if no petition has been lodged at the Constitutional Council before a law is promulgated to question its constitutionality, nothing may be done to cure its unconstitutionality once it is enacted. The only cure would be to enact a new law that will be free from the defect in question.

The situation is worsened here by the fact that the relevant legal instrument, the 1981 Ordinance on Civil Status Registration, is an ordinance and not a law in the strict sense of the term. In effect, an ordinance, as per article 28 of the Constitution, is any legal instrument that is enacted by the Executive on a domain that is under the competence of Parliament as spelled out in article 26 of the Constitution which the Parliament relinquishes to the Executive for a limited duration of time and for a specific subject-matter. This means that, the ordinary legislative process for adopting laws as laid down in the Constitution is not followed. Therefore, it is not possible to question the constitutionality of the law before it is promulgated as the instrument in question is enacted by the President of the Republic directly before being endorsed by Parliament after the act.

At this point, it is thus quite clear that even if the 1981 Ordinance on Civil Status Registration does not comply with international standards set out in international human rights instruments ratified by Cameroon, there is no cure at the moment as its unconstitutionality may not be challenged by an ordinary court of law nor by the Constitutional Council as such a possibility is not provided for in the Cameroonian internal legal order as concerns ordinances and, more generally, laws that are already promulgated. In effect, apart from the 1962 Convention on

Consent to Marry which was adopted prior to the enactment of the 1981 Ordinance on Civil Status Registration, any other international instrument on the minimum age for marriage such as the CEDAW, the CRC, the AfCWRC and the Maputo Protocol are post-1981 instruments. Therefore, although they provide otherwise, and although Cameroon uses a monist approach to incorporation of international legal instruments into its internal legal order, it is the law as contained in the 1981 Ordinance on Civil Status Registration that still applies, for the time being, until a new law is enacted that complies with international standards. This means that, as unconstitutional as the minimum age for marriage set out in the 1981 Ordinance on Civil Status Registration may be, it is still "good law" and will apply until a law is enacted that will be devoid of such unconstitutionality.

It should be noted that even in countries where ordinary courts of law are allowed to declare laws to be unconstitutional, the law still remains in force pending its amendment by Parliament. This is for example the case in Tanzania where Mwakyambiki (2023) refers to the case of *Attorney General v. Rebeca Z. Gyumi* where the petitioner seized the court on behalf of all minors for it to declare specific provisions of the Tanzanian Law of Marriage Act N°5 (sections 13 and 17 relating to the minimum age and establishing gender inequality between girls and boys regarding the minimum age for marriage as in Cameroon) as unconstitutional. The court held that marriage laws in Tanzania were both unconstitutional and discriminatory in addition to violating the rights of the girl child. However, such a declaration as important as it may be, is not enough without the amendment of the law.

5. Conclusion

The minimum age for marriage is a critical human rights issue that has been the subject-matter of several international human rights instruments, each calling States Parties to enact laws that will clearly provide for it so as to ensure compliance. While many countries worldwide strive to comply with the international standards enshrined in those international human rights instruments, Cameroon has not made any change to its internal law and still provides for child marriage in plain violation of its international undertakings under the CRC, the CEDAW, the AfCRWC and the Maputo Protocol that it ratified. While Cameroon complies with certain aspects of these international standards such as having a law that sets the minimum age for marriage, that law defaults in setting such a minimum age below the age spelled out in international human rights instruments and by containing a provision that may eventually lead to the conclusion that there is no minimum age for marriage in Cameroon. In effect, a waiver of the President of the Republic may permit marriage even under the age indicated. Such an exception would still stand as complying with international undertakings if at all Cameroon had ratified the UN Convention on Consent to Marriage which gives room for that. Yet, even if such was the case, as later international instruments clearly provide for the minimum age to be 18 years for both girls and boys, it is doubtful that that specific international instrument would still be considered good law. Cameroon's law also fails in discriminating between girls and boys while all relevant international human rights instruments strongly prohibit any form of discrimination thereby fighting gender inequalities. Unfortunately, the law, as it stands in the 1981 Ordinance on Civil Status Registration, is still good law despite the fact that international legal instruments adhered to are directly incorporated in Cameroon's legal order and rank higher than internal legislation. For civil status registrars and judicial courts alike to stop complying with it, the only solution under Cameroonian law is the enactment of a new law. This is all the more important as there are still traditions and customs that allow under age marriage while the dramatic consequences to girls, the main victims of child marriage, to their mental, psychological and physical health, level of education with undesirable consequences on the economy of society and its overall wellbeing point to the need to raise the minimum age for marriage. However, it is to be noted that the Penal Code of Cameroon sanctions a person who forces girls and boys under 18 years into marriage under section 356(3). This age was increased when the new Penal Code was enacted in 2016 abrogating the previous one which provided for the same penalties but for forcing girls to marry under 14 and boys under 16. This means that the full meaning and effects of international undertakings are taken into consideration. It remains for a new law to be enacted. Several drafts of the Code of Persons and the Family have been produced over decades, adoption of same would solve the issue and make Cameroon comply with international standards when it comes to the minimum age for marriage. Meanwhile, the prevalence rates for child marriage in Cameroon are 11% by 15 years and 30% by 18 years old (Girls Not bride, 2024). This makes it an urgent matter if Cameroon is to pursue the realisation of Sustainable Development Goal 5.3 which aims at eliminating all harmful practices such as child, early and forced marriage and female genital mutilations by 2030.

Author Contributions: This is the work of the sole author listed.

Funding: Not applicable.

Conflict of Interests: The author declares no conflict of interest.

Informed Consent Statement/Ethics Approval: Not applicable.

References

African Charter of the Rights and Welfare of Children of 11 July 1990.

Anggreni, D., Notobroto, H.B., Soedirha, O. (2023). Determinants factors of early marriage in developing countries: A literature review. *Journal of Public Health in Africa*. Volume 14(s2):2543. DOI: https://doi.org/10.4081/jphia.2023.2543.

Attorney General v. Rebeca Z. Gyumi (Civil Appeal 204 of 2017) [2019] TZCA 348 (23 October 2019).

Bakhtibekova, Z. (2014). *Early girls' marriage in Tajikistan: Causes and continuity*. [Ph.D. Thesis]. University of Exeter. https://ore.exeter.ac.uk/repository/bitstream/handle/10871/17438/BakhtibekovaZ.pdf.

Child Frontiers Ltd. (2015). *Qualitative study of child Marriage in six districts of Zambia*. At https://www.unicef.org/zambia/media/621/file/Zambia-child-marriage-research.pdf.

Cislaghi, B., Mackie, G., Nkwi, P. & Shakya, H. (2019). "Social norms and child marriage in Cameroon: An application of the theory of normative spectrum". *Global Public Health.* 14:10, DOI: 10.1080/17441692.2019.1594331.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 10 December 1962.

Convention on the Elimination of Discrimination against Women of 18 December 1979.

Convention on the Rights of the Child of 30 November 1989.

De Schutter, O. (2019). *International human rights law. Third edition.* Cambridge University Press.

Declaration of the Rights of the Child of 28 February 1924.

El Kobrousli, N. (2019). *The Lebanese legal system's contribution to child marriage*. [M.A. Thesis]. Columbia University. https://academiccommons.columbia.edu/doi/10.7916/d8-rwt5-2a13.

Essama-Mekongo, P. (2024). "Reflections on the continuous application of "foreign law" in Former West Cameroon". *Revue Africaine des Réflexions Juridiques et Politiques*. Vol 3 -N°2. https://hal.science/hal-04487505/document.

Frimpong Oppong, R. (2006). Re-imagining international law: An examination of recent trends in the reception of international law into national legal systems in Africa. *Fordham International Law Journal*, Vol 30 (2). https://ir.lawnet.fordham.edu/ilj/vol30/iss2/3.

Girls Not Brides. (2024). *Cameroon* at https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/cameroon/.

Human Rights Watch. (2014). "*I've never experienced happiness". Child marriage in Malawi*. ISBN: 978-1-62313-1098. https://www.hrw.org/report/2014/03/06/ive-never-experienced-happiness/child-marriage-malawi.

International Covenant on Civil and Political Rights of 16 December 1966.

International Covenant on Economic, Social and Cultural Rights of 16 December 1966.

Kohno A, Dahlui M, Nik Farid ND, Safi, R. and Nakayama, T. (2019). In depth examination of issues surrounding the reasons for child marriage in Kelantan, Malaysia: A Qualitative study. *BMJ Open*. 9:e027377. doi:10.1136/ bmjopen-2018-027377.

Kotze, M. (2020). *Is the difference in minimum legal ages of marriage for girls and boys in South Africa a violation of equality?* [MPhil Thesis]. University of Pretoria. https://repository.up.ac.za/handle/2263/73472.

Law n° 2004/004 of 21 April 2004 relating to the Organisation and Functioning of the Constitutional Council as amended by Law N°2012/15 of 21 December 2012.

Law N° 96/06 of 18 January 1996 to amend the Constitution of 2 June 1972.

Law N°2016/007 of 12 July 2016 relating to the Penal Code.

Law n°67/LF/1 of 12 June 1967 relating to the Penal Code as amended.

Law of Marriage Act N°5 of 1971 of Tanzania.

Lebni, J.Y., Solhi, M., Azar, F.E.F., Farahani, F.K., and Irandoost, S.F. (2023). Exploring the consequences of early marriage: A conventional content analysis. *The Journal of Health Care Organization, Provision, and Financing*.Volume 60: 1–14. https://doi.org/10.1177/00469580231159963.

Mafhala, V.R. (2015). *Child marriage practice: A cultural gross violation of human rights of girls in a free South Africa.* [MPhil Thesis]. University of Pretoria. https://repository.up.ac.za/bitstream/handle/2263/53428/Mafhala_Child_2016.pdf?sequence=1.

Maswikwa, B., Richter, L., Kaufman, J. and Nandi, A. (2016). "Lois sur l'âge minimum du mariage et prévalence du mariage précoce et de la maternité à l'adolescence : Données d'Afrique subsaharienne". *Perspectives Internationales sur la Santé Sexuelle et Génésique*. Numéro spécial. doi: 10.1363/FR02916.

Menkiawi, E.N. (2023). *Reducing child marriage in Cameroon: Case of Tignere Sub-Division, Adamawa Region, Cameroon.* [Master's Thesis]. Seoul National University. https://s-space.snu.kr/handle/10371/196651.

Mwakyambiki, S. E. (2023). Gender implications of child marriage: Reflection from Section 13 of the Law of Marriage Act No. 5 of 1971. *East Africa Journal of Social and Applied Sciences,* 5(1): 1-13. https://doi.org/10.2022/eaj-sas.v5i1.172.

Ordinance No. 81 – 02 of 29 June 1981 on Civil Status Registration as amended.

Owohunwa, F.O. (2018). *Extent, experiences and perceptions on the practice of child marriage in Northern Nigeria*. [Ph.D. Thesis]. University of Leeds. https://etheses.whiterose.ac.uk/22777/.

Protocol to the African charter on Human and Peoples' Rights on the Rights of Women in Africa of 11 July 2003.

Ramnath, P. (2015). *Are traditional African practices relating to child marriages in the face of HIV/AIDS in violation to the South African legal framework?*. [MPhil Thesis], University of the Western Cape. https://core.ac.uk/download/pdf/58915977.pdf.

Suyanto, B. Sugihartati, R., Hidayat, M.A., Egalita, N. and Mas'udah, S. (2023). The causes and impacts of early marriage: The ordeal of girls in East Java, Indonesia. *Sociologia, Problemas e Práticas.* 101. http://journals.openedition.org/spp/11901.

UNFPA. (2004). *Child Marriage Advocacy Programme: Fact Sheet on Child Marriage and Early Union*. https://tanzania.unfpa.org/sites/default/files/pub-pdf/Child%20Marriagge%20fact%20sheet%20English%202014_0.pdf.

Universal Declaration of Human Rights of 10 December 1948.

Zaher, Z. (2013). *The problematic socialization of child marriage in Afghanistan: Perceptions, challenges, and possibilities for social change*. [M.A. Thesis]. Ohio University. https://etd.ohiolink.edu/acprod/odb_etd/ws/send_file/send?accession=ohiou1375720048&disposition=inline.