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Consideration of reports submitted by States parties under article 40 of the Covenant

Cameroon

Addendum

Information received from Cameroon on the implementation of the Committee's concluding observations (CCPR/C/CMR/CO/4)*

[24 January 2013]

Response to the recommendations in paragraphs 8, 17 and 18 of the Committee's concluding observations (CCPR/C/CMR/CO/4)

Response to the recommendation in paragraph 8 of the concluding observations, on women's rights

1. Cameroon has been reforming the legislation governing the justice sector for several years. The reform includes bringing domestic legislation into conformity with international human rights instruments in order to, inter alia, promote gender equality by repealing discriminatory provisions and enacting new ones that implement treaty provisions. The following instruments are therefore now being drafted: a Civil Code, a Code of Civil and Commercial Procedure and a revised version of the Criminal Code.

2. The work to bring domestic legislation into line with the Convention on the Elimination of All Forms of Discrimination against Women includes, for example, setting the minimum age for marriage at 18 for both men and women in the draft Civil Code that is currently being validated. In addition, under the new Criminal Code that is now being finalized, female genital mutilation, which is considered a form of serious injury, and "breast-ironing", which is deemed to harm physical growth, are prohibited, and a rapist who marries his victim is no longer granted amnesty.

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been formally edited.

3. Meanwhile, until these new laws have been finalized and adopted, the self-executing provisions of the treaties to which Cameroon is a party are directly applicable both at the administrative and judicial levels and take precedence over domestic legislation, including any ineffectual, discriminatory or unfavourable domestic laws, as set forth in the preamble to the Constitution, which states that:

“The people of Cameroon,

Declare that the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights;

Affirm their attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations, the African Charter on Human and Peoples’ Rights and all duly ratified international conventions relating thereto ...”

and in article 45, which states 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.”

4. With regard to the application of international conventions by the domestic courts, in civil matters, the provisions of article 16, paragraph 1 (h), of the Convention override articles 1421 and 1428 of the Civil Code which, respectively, provide as follows: “The husband shall be the sole administrator of community property. He may sell, alienate and mortgage that property without his wife’s participation”; and “The husband shall administer all his wife’s personal property. He may, on his own, take any action related to the property or possessions belonging to his wife.”

5. Examples from case law include the following decisions:

6. Decision No. 615/civ/06-07 of 17 October 2007 of the Centre Region Appeal Court in Yaoundé, in the case of *Yonkeu (née Nsei) Christine v. Liman Saibou, Mamoudou Saibou*.

7. In this case, the Appeal Court overturned judgement No. 368/CIV of 27 February 2006 handed down by the Tribunal de Grande Instance (Court of Major Jurisdiction) of Mfoundi, which had dismissed the petition filed by Ms. Yonkeu to invalidate the sale of a residence that formed part of the community property on the grounds that the husband is the head of the family and, since he had left the residence in question, it was wrong of her to remain in it.

8. In its arguments, the Appeal Court recalled that that judgement, “... disregarding the provisions of the [Convention on the Elimination of All Forms of Discrimination against Women] and the 1996 Constitution of Cameroon, applied article 1421 of the Civil Code ...”¹

9. The Appeal Court consequently annulled the sale that had taken place between the plaintiff’s husband and the two buyers.

10. Judgement No. 22/CIV/TGI of 8 November 2010 of the Court of Major Jurisdiction of Menoua in Dschang. In this case, Ms. Jeannette Kana took her husband, whose name is Gniejoungo, to the aforementioned court to have it annul his sale of a building that was part of their community property and in which she was living with their children. As a legal basis for her claim, she invoked article 16, paragraph 1 (h), of the Convention, which

¹ Decision No. 615/Civ of 17 October 2007, back of tenth folio.

guarantees “the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration”. The defendant meanwhile rested his case on the provisions of article 1421 of the Civil Code, according to which “the husband shall be the sole administrator of community property. He may sell, alienate and mortgage that property without his wife’s participation.” In the end, the Court did not rule in favour of the plaintiff, on the grounds that the building sold was not community property since it had been acquired prior to the marriage. What is interesting in this case is that the judge acknowledged the admissibility of invoking the Convention even though he based his ruling on the origins of the property.

11. This is the position of the Supreme Court of Cameroon, which, in Decision No. 363/CC of 29 September 2005, provided for a daughter to be designated as an heir or the principal heir to her deceased father’s estate. The commentary on that decision by the Supreme Court in its annual report of 2007 states that “this decision, which for the first time refers to a person of the female sex, is in accordance with the Constitution of Cameroon and the Universal Declaration of Human Rights of 1948, which advocate equality for all. It is also in keeping with the [Convention on the Elimination of All Forms of Discrimination against Women] of 1979, which has been in force in Cameroon since 22 September 1994.” The Supreme Court thus recognized that the Convention can be invoked and enforced by the domestic courts and takes precedence over domestic legislation when the latter is discriminatory.

12. To standardize case law on the implementation of international conventions by domestic courts, Cameroon has undertaken to provide continuous training to members of the judiciary. Judges, lawyers and court officials receive training in the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and the human rights issues associated with HIV/AIDS, among other subjects. The budget for these activities, however, does not allow for the training to be given in every jurisdiction in the country unless support is provided by technical and financial partners.

13. With regard to article 229 of the Civil Code, on the grounds for divorce, the provisions of the article may seem discriminatory if read in isolation, but in fact they are not. The lawmakers of 1804 believed it necessary to specify adultery as grounds for divorce in two separate, successive articles according to whether the divorce petition was filed by the husband or the wife. Article 229 thus provides that “the husband may file for divorce on the grounds of his wife’s adultery”, while article 230 provides that “the wife may file for divorce on the grounds of her husband’s adultery”. Spouses therefore have the same rights in this regard.

14. There is discrimination against women in the definition of the characteristic elements of the offence of adultery as set forth in article 361 of the current Criminal Code, which reads as follows: “A married woman who has sexual relations with a man other than her husband shall be punished with between two and six months’ imprisonment or a fine of between 25,000 and 100,000 francs. A married man who has sexual relations in the conjugal home with women other than his wife or wives or who has regular relations with another woman outside the conjugal home shall be liable to the same penalties.” This will be rectified in the new Criminal Code.

15. The draft Code, which is now being finalized, has amended this article to read as follows:

“(1) A married woman who has sexual relations with a man other than her husband shall be punished with between two and six months’ imprisonment or a fine of between 25,000 and 100,000 francs.

(2) A married man who has sexual relations with women other than his wife or wives shall be liable to the penalties established in paragraph (1) above.”

16. In Cameroon, there are as many customs as there are ethnic groups or indeed tribes. Since these customs have not been written down, at the moment it is difficult not only to codify them, but also, more particularly, to make them conform to modern law. It should, however, be recalled that under positive law as it currently stands in Cameroon, decisions based on discriminatory customs are overturned. Moreover, customary laws may only be applied to matters that are still not covered by modern law. The Supreme Court has upheld this principle for many years in its jurisprudence, which has the status of law.

17. For example, there have been two important decisions whereby the Supreme Court has ruled that, in all matters on which legislation has been passed, the law takes precedence over custom (Decision No. 445 of 3 April 1962),² and that traditional courts must desist from following customs that contravene the law (Decision No. 8 of 5 March 1968).³

18. The following are cases in point:

- Decision No. 43 of 16 January 1978 and Decision No. 157 of 25 June 1978, whereby the Supreme Court decided that “the Douala custom that deprived women of their inheritance rights could no longer be applied in the light of the adoption of the Constitution of 2 June 1972, which proclaims the equality of all citizens of Cameroon regardless of their sex; consequently, the contested decision, in ruling that according to Douala custom women did not have the right to inherit and did not have the right to a share in the inheritance granted to male children, violated the aforementioned constitutional principle and was subject to annulment”;⁴
- Decision No. 38/L of 14 May 1998 in the case of *Makeu Dorothée v. Fongang Dorat*,⁵ whereby the Supreme Court quashed Decision No. 109/L, which had been handed down on 22 April 1994 by the Customary Division of the Appeal Court and had discriminated between two heirs in favour of the male heir in accordance with Bamileke custom. The Supreme Court’s ruling was based on the grounds that: “... according to the preamble to the Constitution of Cameroon, all persons are equal in rights and duties, and under article 745 of the Civil Code, their children or their descendants inherit from their mother and father regardless of their sex or order of birth; as legal public order provisions, these take precedence over the contrary Bamileke custom of which Fongang Dorat avails himself. The preamble to the Constitution and article 745 of the Civil Code restore equality and, by doing so, combat discrimination against women.”⁶

To raise awareness amongst women about their rights under statutory law and the Convention, several measures have been taken. The main ones are as follows:

- As far as central Government services are concerned, the ministry for women and family affairs has set up a 15-minute weekly broadcast during which information on national legislation and the Convention is disseminated in the country’s official languages (English and French);
- At the regional level, these broadcasts are allocated two hours a week and are transmitted in local languages as well as the official ones;

² Supreme Court Report, 1963.

³ Supreme Court Report, 1969.

⁴ Supreme Court Report, 1979.

⁵ See *Juridis périodique* No. 3, October-November-December, 1998.

⁶ Supreme Court of Cameroon, Decision No. 38/L of 14 May 1998, *Juridis infos* No. 37, 2001.

- At the local level, community radio stations are used to help broadcast information on women's rights;
- The translation and dissemination of the Convention in four national languages (Ffulde, Bulu, Pidgin Ghomala);
- The annual publication and nationwide distribution, since 2008, of 10,000 leaflets on the Convention;
- The organization, since 2008, of 16 days of protest against violence, which have been devoted to raising awareness of the Convention through round-table discussions, educational talks, panel discussions, radio and television broadcasts, and specialized articles in both the public and private press;
- The drafting and distribution, in 2010, of 2,000 copies of the Convention in simplified English and French;
- The systematic organization nationwide of round-table discussions, conferences and educational talks throughout the country on subjects related to the Convention to mark women's day and family day;
- The distribution, in 2010, through the network of women's associations in the 10 regions of the country, of the booklet produced by the United Nations Educational, Scientific and Cultural Organization (UNESCO) entitled "Passport to Equality", which provides a summary of the Convention in simple language;
- The drafting and distribution of 3,000 leaflets on the human rights of women, their right to inherit and their right to land, to mark International Women's Day on 8 March 2012.

Response to the recommendation in paragraph 17 of the concluding observations, on combating torture

19. The elimination of torture is resolutely pursued by the Government, which has defined acts of torture as an offence under the Criminal Code, in article 132 bis, entitled "Torture". The application of sanctions in relation to torture, as in the case of all criminal sanctions, is the responsibility of judges, who are bound to act in accordance with the law and their conscience. Campaigns to raise awareness of the seriousness of acts of torture are organized by the Government through awareness-raising seminars for law-enforcement personnel. For example, with the support of the African Commission on Human and Peoples' Rights, the Cameroonian Government held a seminar on the prevention and eradication of torture, from 24 to 26 January 2012 in Yaoundé. The seminar brought together physicians, police officers, civilian and military judges, prison personnel and civil society representatives to address the issue of torture.

20. The inadmissibility of evidence obtained through torture is established by law in article 315, paragraph 2, of the Code of Criminal Procedure. This article states that "a confession is not admissible as evidence if it was obtained through force, violence or threat or in exchange for the promise of some kind of advantage or through any other means that violates the free will of the author". It is up to the parties in criminal proceedings to avail themselves of this article.

21. Overcoming the difficulty that victims of acts of torture committed by law enforcement and prison personnel have in denouncing their torturers remains a challenge for the public authorities responsible for taking measures to end the practice.

Response to the recommendation in paragraph 18 of the concluding observations, on the prosecution of members of the security forces accused of using excessive force

22. With regard to this recommendation, the information provided at the time of the defence of the fourth periodic report to the Human Rights Committee during the session of 12–30 July 2010 still applies.⁷

⁷ See CCPR/C/CMR/CO/4 of 4 August 2010, p. 5.