

BREAST IRONING, A SILENT CASE OF VIOLENCE AGAINST GIRLS IN CAMEROON¹

PLANCHADO DE SENOS, UN CASO DE VIOLENCIA SILENCIOSA
CONTRA NIÑAS EN CAMERÚN

Recibido: 25/02/2022 – Aceptado: 27/07/2022

DOI: <https://doi.org/10.48162/rev.100.003>

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¹ This paper is part of an excerpt of my Master thesis presented as a final requirement for the obtention of a master's in human Rights.

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Abstract

Breast Ironing is a painful practice carried out to retard the growth of the breasts using foreign objects. It is a torturous practice with proven long-term physical and psychological effects. Though it was and is a culturally accepted process understood to protect young girls from unwanted sexual advances and early pregnancies, its course and effects inevitably result in human rights violations and amount to torture. Breast Ironing has been qualified as gender-based violence and violence against women and girls condemned by international and regional treaties which also direct states to take additional measures to protect women and girls and to prevent the occurrence of such acts.

This article aims to show that despite breast ironing being a harmful act that can be classified as torture and violence targeting girls, the State of Cameroon having ratified most conventions protecting women and the girl child from violence has not taken adequate measures to fulfil its obligations to that effect.

Keywords: Breast ironing; Gender-based violence; Torture; Girl child.

Resumen

El planchado de senos es una dolorosa práctica que se lleva a cabo utilizando diferentes objetos para retrasar el crecimiento de los pechos. Es una práctica tortuosa, que arrastra graves efectos físicos y psicológicos a largo plazo. Si bien era, y actualmente es una práctica aceptada culturalmente y entendida para proteger a las niñas del desarrollo sexual prematuro y embarazos a temprana edad, su proceso conlleva inevitablemente una violación a los derechos humanos y una tortura prolongada. El planchado de senos ha sido calificado como violencia de género y violencia contra las niñas y mujeres, condenado por tratados internacionales y regionales que, a su vez, también conducen a los Estados a tomar medidas adicionales para proteger a las mujeres y niñas e impedir tales actos de violencia.

Este artículo intenta demostrar que, a pesar de que el planchado de senos es una actividad dañina clasificada como tortuosa y violenta que discrimina a las niñas, el Estado de Camerún no ha tomado medidas adecuadas para cumplir con sus obligaciones a tal efecto, a pesar de haber ratificado la mayoría de las convenciones que intentan proteger a mujeres y niñas de sufrir violencia.

Palabras clave: Planchado de senos; Violencia de género; Tortura; Niñas.

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1. Introduction

For most children, their birthday is a time of celebration. That was not the case for Mirabel when she turned 10. Mirabel is a Cameroonian refugee living in Nigeria due to the crisis going on in the English-speaking regions of Cameroon. Turning 10 marked the start of gruelling daily torture – having her breasts ironed with hot stones or pestles by

her mother. *“I have been in pain since the first day”* says Mirabel after enduring the procedure. Her mother Angela declared that the pain and discomfort her daughter is enduring worries her less than the reports she has heard of teenage girls being sexually harassed or exploited by men. Her intention is to make her daughter less attractive to men. As she puts it *“I just don’t want her to become a target of boys around her, I’m aware that many boys here like to chase after little girls.”* According to Obaji who carried out this interview, many of the families interviewed mentioned the vulnerability of young girls growing up as refugees as one of the reasons for their decision to iron their daughters’ breasts. This practice has been happening in Cameroon for generations³.

Breast Ironing has been qualified as Gender-based violence, which is one of the most prevalent human rights violations in the world. Though it undermines the health, dignity, security, and autonomy of its victims, it remains shrouded in a culture of silence. According to the United Nation Women’s United Nations Entity for Gender Equality and the Empowerment of Women, violence against women is a result of gender inequality and discrimination influenced by the historical and structural power imbalances between women and men which exist in varying degrees across all communities in the world. These structural inequalities between men and women in the society portrays the woman as weak and subordinate to the man, rendering the woman vulnerable in all levels in the society⁴.

Gender-based violence as expressed by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, may amount to torture or cruel, inhumane or degrading treatment against women in certain circumstances including cases of rape, domestic violence or other harmful practices⁵. Breast ironing is not only gender-based violence but also involves

3 OBAJI, Philip Jr. ‘No girl is safe’: The mothers ironing their daughters’ breasts. Cameroonian girls are enduring a painful daily procedure with long lasting physical and psychological consequences. [en línea] Al Jazeera. 3 de febrero de 2020. <https://bit.ly/3KsfUUs>

4 UNITED NATIONS. UNAIDS. Defining Violence Against Women and Girls. Entity for Gender Equality and the Empowerment of Women. <https://bit.ly/3ARmlD9>

5 UNITED NATIONS. General Assembly. Distr. general. Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. A/HRC/31/57 January 29. <https://bit.ly/3PZu1wJ>

acts which could amount to torture. To establish this, this paper will examine the applicable legal framework as well as the work of the relevant international committees and special rapporteurs. The Cameroonian standards are also going to be considered against the international and regional standards for the protection of women and girls to demonstrate that Cameroon is not doing enough to prevent and protect breast ironing as a human rights violation.

2. A Brief Explanation of the Practice of Breast Ironing

Breast Ironing is one of the five United Nations under-reported gender-based crimes⁶. The term breast ironing is defined by the United Nations entity for Gender Equality and the Empowerment of Women as “the painful practice of massaging or pounding young girls’ breasts with heated objects to suppress or reverse the growth of the breasts”⁷. The practice is commonly performed by family members, and statistics have shown that 58% of the time it is carried out by the mother, grandmother, or any “concerned aunty”. According to a study carried out by GTZ, breast ironing is mostly done in the Littoral region of Cameroon with 53% of women having undergone the practice when they were young. In the West and Centre regions 31% of girls have been subjected to the practice, the Adamawa region has a prevalence of 30% with the North-west region following at 18 %, 17% in the East region of the country, 11 % in the South-West region and 7% in the North and Extreme North region of the country⁸. In other words, 24% of young girls in Cameroon have experienced this traumatic practice. It is mostly carried out on girls when they reach puberty or immediately there are early signs of breast development. Those who develop breasts as early as nine years old are sometimes forced to undergo same process.

Breast ironing is also practiced in other African countries such as Guinea-Bissau, Chad, Togo, and Benin. However, this practice is not limited to Africa as cases of breast ironing have been reported in the United Kingdom (UK) migrant

6 AFRICAN HEALTH ORGANISATION. *Breast Ironing Fact Sheet*. [en línea] 2020. <https://bit.ly/3wyK65M>

7 The Advocates for Human Rights. *Breast Ironing*. [en línea] Septiembre 2020. <https://bit.ly/3e0GmDP>

8 CAMEROON. Committee on the Elimination of Discrimination against Women. 57th Session.

10 February-28 February 2014, pág. 8 [en línea] <https://bit.ly/3AU76ip>

community⁹ raising the question of what should be done to deter and prevent this practice. According to reports, around 1000 girls between 9–15 years old in the UK are currently thought to be at risk of breast ironing. There is no specific law within the UK concerning breast ironing; it is a form of physical abuse and local authorities should review their internal violence against women and girls strategy and ensure it reflects breast ironing as a form of gender-based violence¹⁰.

Breast Ironing is a practice primarily motivated by the misperception that the practice protects girls from sexual advances, rape, early marriage, and pregnancy. These are beliefs that are deeply rooted and challenging them is always faced with a lot of resistance and even to some extent violence.

According to social sciences, breast ironing is part of a complex set of “inherited ideas, beliefs, values and knowledge which constitutes the shared basis of social action” that has been transmitted from one generation of female relatives to the other¹¹. It is a social and cultural practice aimed at reversing and hampering the growth and development of the breasts with the aid of several objects including hot stones and elastic bandages. Breast development is taken as an indication of maturity and sexual readiness. Practitioners therefore view breast ironing as a protective measure to protect the girl child and keep her clear of attention from the opposite sex thereby protecting her from sexual harassments, rape, and unwanted pregnancies¹². It is supposed to be done in the “best interest” of the girl child. They are also of the opinion that breast ironing is a mechanism and constitutive element of the complex political economy of marriage and it is used to control the body of the girl and their sexuality to serve the interest of patriarchy.

9 LAZAREVA I. *Revealed: ‘dozens’ of girls subjected to Breast Ironing in UK*. The Guardian. [en línea] sáb 26 ene 2019 <https://bit.ly/2WkWHG4>; LAZAREVA I. *Breast Ironing is abuse and could lead to prison term says CPS*. The Guardian [en línea] 19 jul 2019 <https://bit.ly/3ArQaOH>; National FGM Centre. *Breast flattening. The National FGM centre*. [en línea] 2020 Disponib Breast Ironing Fact Sheetle en: <https://bit.ly/3KtA7EO>

10 African Health Organisation. *Breast Ironing Fact Sheet*. Op. cit.

11 SEWEL, W. The Concept(s) of Culture. In: *Beyond the Cultural Turn: New Directions in the Study of Society and Culture*. V. E. Bonnell, L. Hunt(eds.) Berkeley, Los Angeles: University of California Press, 1999, pág. 46.

12 RYSST, M. “Healthism” and looking good: Body ideals and body practices. *Norway Scandinavian Journal of Public Health*. 2010, 38, suppl. 5, págs 71–80.

Others describe breast ironing as a gendering practice that emphasises and reiterates the normative perception of what the body of a woman is and what it means. Hence, it is a practice meant to shape the girl physically and psychologically¹³. For girls who “voluntarily” give in to the practice, it is with the intention to make them unattractive to men so that their honour can be conserved and their prospects of completing education not thwarted and a future guaranteed for them. It is generally viewed as a corrective action with the aim of deterring others and reinforce the authority of the parents¹⁴.

Although it is believed that it is a cultural practice with positive outcomes, many of the girls who have undergone the practice suffer from breast trauma and it is therefore a call for concern as this practice is not only deemed to be harmful but also abusive. This practice which is being used as a tool to exercise control over girls and deprive them of their human rights is also used as an excuse to encourage gender-based violence and torture. It is therefore the responsibility of States party to the Convention Against Torture to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented¹⁵. Breast ironing compared to female genital mutilation is not only underrepresented in human rights reports and case law. but there is not much research done on this issue. The most prominent research comes from the medical field, explaining the harm of the practice from a medical point of view¹⁶. Social sciences addresses breast ironing as part of a social practice, questions the origin of the practice, and tries to make visible

13 ERIKSSON, L.G. *Breast Ironing in Cameroon: A harmful practice restricting sexuality or a means to protect the girl child from harm*. Master Thesis 2014; BAWE, Rosaline Ngunshi. *Breast Ironing... A harmful practice that has been silenced for too long* [en línea]. Cameroon: Gender Empowerment and Development, August, 2011. <https://bit.ly/3pNrStt>

14 ERIKSSON, L. G. Op. cit.

15 UNITED NATIONS. Committee Against Torture, General Comment No. 2 Implementation of article 2 Implementation of article 2 by States parties 24 January 2008. CAT/C/GC/2 par. 4. <https://bit.ly/3pLwLU2>

16 NKWELLE N. *The Long-Term Health-Related Outcomes of Breast Ironing in Cameroon*. Walden's dissertations and doctoral studies. 7049. <https://scholarworks.waldenu.edu/dissertations/7049>

the reasons that sustain the practice in Cameroon¹⁷. It should be known that this is mostly carried out by immediate family members in other words it is a 'woman to woman' violence thus the reason for the silence about the practice.

The objective of this article is to reiterate the importance of viewing breast ironing as a harmful practice and a human rights violation. Analysing breast ironing through the lens of International human rights law will establish that the state of Cameroon is failing in its obligations arising out of signed and ratified human rights treaties, consequently violating the rights of the girl child. It should be noted that the State of Cameroon has not explicitly denounced the practice of breast ironing nor taken adequate measures to put an end to the practice. Breast ironing does not only violate the physical and psychological integrity of its victims (their right to development and right not to be tortured) but it is an act which leads to the multiple violations of the rights of the girl child.

Thus, this article will examine international and regional legal frameworks which protect the girl child as well as the opinions of the relevant committees, in conjunction with provisions found in Cameroonian laws, to establish the need for a better regime for the protection of girls against Breast Ironing in Cameroon.

3. Legal Framework for the Protection of the Rights of the Girl Child in Cameroon

As a member of the United Nations (UN) Cameroon has ratified many UN human rights conventions and thus made binding international commitments to adhere to the standards laid down in these universal human rights documents. The United Nations Charter lays emphasis on the respect of human rights and fundamental freedoms of all without distinction as to race, sex, language, or religion¹⁸. Although it does not directly refer to a group or persons it can be inferred to guarantee the rights of the girl child which includes the right to have a life free of violence and not to be tortured.

The Universal declaration of human rights (UDHR) is the universal basis

17 TAPSCOTT, R. *Understanding Breast "Ironing": A Study of The Methods, Motivations, And Outcomes of Breast Flattening Practices in Cameroon*. Feinsein International Center, 2012.

18 UNITED NATIONS. Charter of the United Nations. Article 1(3). <https://bit.ly/3Apz5Fe>

for human rights protection. It provides that all human beings are born free and equal in dignity and rights¹⁹. It also makes mention of the fact that everyone is entitled to enjoy all these rights regardless of their race, colour, sex, language, religion, social origin, or other status²⁰. The enjoyment of these rights concern everyone including children and states are under the obligation to ensure that everyone under their jurisdiction does. The UDHR also stresses on the fact that no one should be tortured or subjected to cruel, inhumane, and degrading treatment²¹ and that states should guarantee equal protection against any discrimination in violation of this declaration and incitement to such discrimination.

Cameroon being a signatory to many of these treaties and having ratified them is under the obligation to guarantee that all its citizens and anyone in its territory does not suffer any form of discrimination, has the right to life and is treated with dignity and free from torture. This part examines all the laws applicable to breast ironing in Cameroon, emanating from international and regional treaties, general recommendations and relevant statements made by their committees, as well as national laws.

3.1 International Covenant on Economic Social and Cultural Rights; General Recommendations and Concluding Observations

The International Covenant on Economic Social and Cultural Rights (ICESCR) which provides for the equal rights of both men and women, was ratified by Cameroon in 1984. Its preamble recognizes the indivisibility of human rights, thereby also guaranteeing the rights of children. It recognizes that the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world. According to article 10, states are required to accord the widest protection to the family particularly for its establishment and while it is responsible for the care and education of dependent children. It also asks that special protective measures and assistance should be taken to ensure children do not suffer discrimination

19 UNITED NATIONS. *Universal Declaration of Human Rights*. Article 1. <https://bit.ly/3PO2rCM>

20 Ibidem, Article 3.

21 UNITED NATIONS. *International Covenant on Economic, Social and Cultural Rights*. Article 5. <https://bit.ly/3TgK7oV>

[ly/3TgK7oV](https://bit.ly/3TgK7oV)

and are free from economic and social exploitation; every child is of sound health both mentally and physically, therefore ensuring that no harm is done to their physical being including torture. In interpreting the covenant, it can be argued that though it does not explicitly mention violence against children or torture, it is the duty of the state to ensure every child has an education and teen pregnancy for example should not be an excuse for a child to stay out of school and neither should it be used as an excuse to perpetrate violence or torture²².

Recognizing that violence against women and children is still prevalent in Cameroon, the Committee in its concluding observation expressed deep concern that practices that are harmful to women and girls remain widespread in the State even though they are prohibited by law (art. 10)²³. The state was asked to take necessary steps to strengthen its legislative framework regarding violence against women by inter alia, adopting a specific law on the elimination of all forms of violence against women and by explicitly making marital rape and domestic violence criminal offences. It urged the State party to adopt effective measures for the elimination and prevention of practices that are harmful to women including polygamy, early marriage, forced marriage and Female Genital Mutilation. To organize large-scale information, educational and awareness-raising campaigns on the seriousness and detrimental effects of violence against women and girls and practices that are harmful to them²⁴. The State was asked to ensure it prohibit all forms of violence against women and girls including harmful practices one of which is Breast Ironing²⁵.

3.2 International Covenant on Civil and Political Rights, General Comments and Concluding Observations

This covenant contains provisions that guarantee the rights and protection of children. Article 2 obliges states to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the

22 UNITED NATIONS. *International Covenant on Economic, Social and Cultural Rights*. Op. cit. Article 12.

23 UNITED NATIONS. *Committee on Economic Social and Cultural Rights, Concluding observations E/C.12/CMR/CO/4(2019)* par. 46.

24 *Ibidem*, par. 47.

25 *Ídem*.

International Covenant on Civil and Political Rights (ICCPR). It further states that every child shall have without any discrimination, rights to measures of special protection because of their status as a minor. The ICCPR also forbids all forms of torture and adds that, no one should be subjected to medical or scientific experimentation²⁶. Cameroon therefore has an obligation under this treaty to ensure no child is subjected to torture.

However, in its concluding observation, the committee found it troubling that there is the persistence of the practices of female genital mutilation and breast ironing in Cameroon. It called on the state to ensure that cases of violence against women are reported and thoroughly investigated and that perpetrators are prosecuted and sentenced. The state should step up its awareness–raising campaigns on this issue, expand and improve shelter services and care arrangements for victims and collect disaggregated data on the extent of violence against women. It also recommended that the state reviews its legislation to criminalize marital rape and establish sanctions that are commensurate with the gravity of the offence; and ensure that all persons who engage in practices involving Female Genital Mutilation or interference with the *normal growth of a body part* are prosecuted and sentenced²⁷.

3.3 Convention on the Elimination of all Forms of Discrimination against Women, General Recommendations and Concluding Observations

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is a key international instrument concerning the rights of women and the rights of the girl child. This treaty was signed by Cameroon in 1983, ratified in 1994. Cameroon also subsequently ratified its optional protocol in 2005. The convention directly addresses and calls for the abolition of all forms of discrimination against women and girls. It demands states to take all appropriate measures including legislation to modify or abolish laws, regulations, customs, and practices which constitute discrimination against women²⁸.

26 UNITED NATIONS. *International Covenant on Civil and Political Rights*. Article 7. <https://bit.ly/3Rby9ul>.

27 UNITED NATIONS. Human Rights Committee. *Concluding observations on the fifth periodic report of Cameroon** /CCPR/C/CMR/CO/5(2017), par. 19 and 20. <https://bit.ly/3TpPvGm>

28 UNITED NATIONS. *Convention on the Elimination of All Forms of Discrimination*. Article 5. <https://bit>.

Again in its general recommendation, the CEDAW committee further clarifies the discrimination against women to include gender-based violence²⁹ which it defines as: violence which is directed against a woman because she is a woman or that affects women disproportionately and that it constituted a violation of their human rights³⁰. The committee acknowledges the fact that gender-based violence affects women throughout their life cycle. It also makes mention of the fact that women shall also include girls. According to the committee, gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances including in cases of rape, domestic violence or harmful practices and in certain cases, some forms of gender-based violence against women may also constitute international crimes³¹.

In its concluding observation to Cameroon, the Committee also expressed deep concern that the State party has not taken sufficient sustained and systematic action to eliminate stereotypes and harmful practices that discriminate against women, including child and forced marriages, female genital mutilation, breast ironing, the stigmatization of widows and widowhood rites, and the kidnapping of children, especially young girls for the sale of organs or magic/religious practices. The Committee is also concerned about the lack of legal provisions specifically criminalizing female genital mutilation and breast ironing and about the limited impact of awareness-raising campaigns undertaken by the State party to reduce harmful practices³². As a result of said violations, the committee recommended that the State should put in place without delay

ly/3dX2M8W

29 UNITED NATIONS. *The UN Declaration on the Elimination of Violence against Women 1993 defines violence against women in its Article 1(a)(b)(c)*.

30 UNITED NATIONS. General Recommendations Adopted by The Committee on The Elimination of Discrimination Against Women (1992), General Recommendation No. 19: Violence Against Women, par. 11, and GR No. 35 (2017). <https://bit.ly/3Tje6wn>

31 UNITED NATIONS. Committee on the Elimination of Discrimination against Women. *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, CEDAW/C/GC/35 (2017), par. 16.

32 UNITED NATIONS. *Committee on the Elimination of Discrimination against Women Concluding observations* CEDAW/C/CMR/CO/4–5(2014), par. 16.

and within a clear time frame, a comprehensive strategy in conformity with articles 2 (f) and 5 (a) of the Convention to eliminate stereotypes and harmful practices that discriminate against women³³, collaborate with civil society, the media, health, education and social systems and other relevant professional groups and traditional leaders to raise awareness about the adverse effects of harmful practices, targeting women and girls as well as men and boys at all levels of society. To equally adopt legal provisions specifically criminalizing breast ironing amongst others, and include adequate sanctions for perpetrators of such acts³⁴. In its response to the committee's recommendation, the state of Cameroon alleges it has criminalized breast ironing by punishing whoever inhibits the growth of another's organ³⁵. In the coming paragraphs, it will be seen that the legal provision which is "supposed" to criminalize breast ironing, is ambiguous and is not an efficient step to deter the practice.

3.4 Convention Against Torture, General Recommendations and Concluding Observations of the Committee Against Torture

This treaty was ratified by Cameroon in 1986. The Convention Against Torture (CAT) defines torture as any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions³⁶. It further states that it is the responsibility of states to take effective

33 UNITED NATIONS. Committee on the Elimination of Discrimination against Women. Op. cit., par. 16 (a).

34 Ibidem, par. 16(b).

35 UNITED NATIONS. Committee on the Elimination of Discrimination against Women. *Follow up to the concluding observations*, CEDAW/C/CMR/CO/4-5/Add.1 (2017), par. 8.

36 UNITED NATIONS. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1*. Disponible en : <https://acortar.link/UYbru0>

legislative, administrative, and judicial or other measures to prevent such acts of torture³⁷. In explaining article 2, the committee against torture extends the definition of torture to include acts committed by non–state actors and private individuals. Where state authorities or officials are aware of such acts and do nothing to prevent, investigate, prosecute, and punish the non–state actors, the state bears the responsibility and its officials will be considered as complicit and held responsible under the covenant³⁸. This obligation includes cases of gender–based violence and domestic violence. It further states that gender is a key factor and being female intersects with other characteristics of the person such as race nationality, age, religion etc, and girls are at risk of torture because of this intersection and recommends that states parties identify these situations and take appropriate measures to punish and prevent them³⁹. The committee in its concluding observation to Cameroon also defined breast ironing as a harmful traditional practice used by certain tribes to delay the development of breasts in adolescent girls using traditional methods that involve massaging the chest with the aid of herbs, sticks, rocks, or kitchen spatulas. The practice does not involve the use of a clothes iron and is aimed at delaying the early development of secondary sexual characteristics in young girls⁴⁰. It equally demanded that Cameroon should ensure that all the cases of sexual and gender–based violence are investigated thoroughly and impartially, with perpetrators prosecuted and punished in proportion with the seriousness of their actions and that victims receive reparations⁴¹.

37 *Ibidem*, article 2.

38 UNITED NATIONS. *Committee Against Torture General Comment No. 2 Implementation of article 2 Implementation of article 2 by States parties* CAT/C/GC/2 (2008), par. 18. <https://acortar.link/uRoAfp>

39 *Ibidem*, par. 22.

40 UNITED NATIONS. *Committee Against Torture. Concluding observation*, CAT/C/CMR/5 (2017), par. 60. <https://acortar.link/U5qdSM>

41 *Ibidem*, par. 48.

3.5 Convention on the Rights of the Child, General Recommendations and Concluding Observations

The aim of the Convention on the Rights of the Child (CRC) is to protect children and ensure they enjoy all rights equally. Cameroon signed this treaty in 1990 and ratified it in 1993. It recognises that children should not be the object of paternalistic protection, rather right holders who participate in decisions concerning their well-being⁴². The CRC is overall guided by four principles which are considered to be the general principles guaranteeing the enjoyment of rights embodied in the CRC: they are the principle of non-discrimination, the principle that the best interest of the child should be a primary consideration in all actions concerning children, the right to life, the survival and development. Though these are not new principles, they are very vital in ensuring the protection of the rights of the child.

According to article 3 of the CRC, the best interest of the child shall be a primary consideration in all actions concerning children. As explained by the committee, this principle is “aimed at ensuring both the full and effective enjoyment of all the rights recognized in the CRC and the holistic development of the child”⁴³. However, an adult’s judgement based on this principle should not override the obligation to respect all the child’s rights under the convention. The practice of breast ironing by mothers is not in the best interest of the girl as it does nothing but cause harm to their bodies, and it is in the best interest of the girl if this practice is stopped and prohibited.

Though this principle does not seek to replace the laws stated in the CRC, Van Bueren is of the opinion that in every action related to the child this principle has attained the status of customary international law⁴⁴. It offers means to protect the rights of the child by providing protection for children

42 VAN BUEREN, G. *Children’s Rights, International Human Rights law*. 3rd. ed. Países Bajos: Daniel Moeckli, 2017.

43 UNITED NATIONS. Committee on the rights of the child. *General comment Nº 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration*. CRC/C/GC/14. Par. 1. <https://acortar.link/ZZhVIE>

44 VAN BUEREN, G. Committee on the rights of the child. *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*. Cambridge: Cambridge University Press, 2008. Págs. 569,575-7.

for those rights protected by treaties that have not been ratified by the state, by requiring respect for those rights in treaties to which reservations have been attached and as an interpretive principle to be applied to those treaties which do not expressly adopt the best interest of the child⁴⁵. The best interest principle as interpreted from article 3 is not the only law that offers protection for children, but ensures that when interpreting the other articles, the best interest of the child is paramount.

Again, article 6 of the CRC obliges states to recognize that every child has the “inherent right to life” and it is the duty of the state to ensure in the best way possible, the survival and development of the child. States therefore have to ensure that the survival of the child continues after birth and that their development which includes physical, psychological, and mental is guaranteed.

In addition, the convention in article 19 outlines the responsibility of states in relation to all forms of violence concerning children. According to this article, state parties shall 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, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. They are not only under the obligation to stop such violence and prosecute perpetrators, but also to adopt measures that will prevent the occurrence of violence and abuse, including addressing the root causes⁴⁶. No violence against children is justifiable and all violence against children is preventable⁴⁷. The CRC committee in its explanation classifies torture, harmful practices amongst others as a form of violence. It should be noted that this article particularly addresses violence at home, as the committee recognizes that majority of cases of violence against

45 VAN BUEREN, G. The Separation of Powers and the International Legal Status of the Best Interests of the Child in Assisting Domestic Courts to Protect Children’s Economic and Social Rights, in T. Collins et al, *Rights of the Child: Proceedings of the International Conference*, Ottawa 2008. Montreal Wilson and Lafleur, págs 237-273.

46 UNITED NATIONS. *Children’s rights convention. Article 19(3)*. <https://acortar.link/KPnjeV>

47 UNITED NATIONS. General Assembly. *Report of the Independence Expert for the Promotion and protection of the rights of children. U. N’s Study on Violence against Children*. A/61/299. (2006), par. 1.

children takes place at home and is mostly perpetrated by family members. It is therefore not in the best interest of the children for states to ignore such incidences or refrain from interfering to protect with the excuse that it does not want to disrupt a family unit.

The CRC has also been interpreted alongside other conventions to broaden the scope of protection for children, especially girls. In a joint recommendation of both CEDAW and CRC, the committee acknowledged that harmful practices affect adult women, both directly and/ or owing to the long-term impact of practices to which they were subjected as girls. According to the committee “most of these practices are discrimination based on sex, gender and age, among other things and have often been justified by invoking sociocultural and religious customs and values”⁴⁸. The committees equally expressed concern that such practices are also used to justify gender-based violence as a form of “protection” or control of women and children in the home or community, at school or in other educational settings and institutions and in wider society⁴⁹. It identifies breast ironing as one of such harmful practices done particularly to girls in the guise that it protects them from sexual harassment and prevents unwanted pregnancy⁵⁰.

Article 37 of the convention though often interpreted to refer to the interest of the child in detention, explicitly states that “no child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment. It can however be argued that interpreting the definition as stated in the CRC, CAT alongside the general comment⁵¹, the state of Cameroon has the obligation to hold non state actors and private individuals responsible for acts of torture committed against children, particularly acts such as breast ironing targeting a child because of their gender.

In 2017 referencing the joint general recommendation No. 31 of the

48 UNITED NATIONS. *Joint general recommendation/general comment N° 31 of the Committee on the Elimination of Discrimination against Women and N° 18 of the Committee on the Rights of the Child on harmful practices* (2014), CEDAW/C/GC/31-CRC/C/GC/18, par. 7. <https://acortar.link/aoA2MC>

49 Ibidem, par. 7.

50 Ibidem, par. 9.

51 UNITED NATIONS. Committee Against Torture CAT/C/GC/2 (2008). Op. cit.

Committee on the Elimination of Discrimination against Women/general comment No.18 of the Committee on the rights of the child on harmful practices (2014), the committee asked Cameroon to *explicitly* criminalize the practice of breast ironing⁵².

3.6 The African Charter on Human and People’s Rights

The African Charter on Human and People’s Rights (ACHPR) does not directly address the rights of the child but states in its article 2 that “every individual shall be entitled to the rights enshrined in the charter without discrimination”. It also states in article 4 that human beings are inviolable: every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right. It also prohibits all forms of torture⁵³ and states that everyone is entitled to equal protection before the law⁵⁴. However in article 18(3), the charter obliges states to ensure the elimination of every discrimination against women and children and guarantee the protection of their rights as stipulated in international declarations and conventions. States therefore have the obligation under the ACHPR to protect children for they are bound by International Conventions as afore stated and to ensure that they have the rights to enjoy the best attainable state of physical and mental health.

3.7 Protocol to the African Charter on Human and Peoples’ Rights on the rights of Women in Africa (Maputo Protocol), and State Report

The Maputo Protocol which complements the ACHPR outlines the obligations of states in ensuring the promotion and protection of women and girls particularly against gender–based violence and harmful practices. This protocol also recognizes sexual and reproductive rights unlike other international treaties. It obliges states to combat all forms of discrimination against women and to take necessary measures to prohibit and eliminate all harmful cultural and traditional practices that endanger the health and well–being of a woman; and

52 UNITED NATIONS. Committee on the Rights of the Child *Concluding observations on the combined third to fifth periodic reports of Cameroon*, CRC/C/CMR/CO/3–5 (2017), par. 28 (b). <https://acortar.link/0DBGYf>

53 AFRICAN UNION. African Charter on Human and Peoples’ Rights. Article 5. <https://acortar.link/E4MNnI>

54 Ibidem, article 3.

based on the notion that one sex is inferior to the other⁵⁵. According to article 4, states must ensure that women are free from violence be it in public or private, take necessary measures to prevent all forms of violence against women and to punish the perpetrators of such violence.

Again in its preamble, the protocol demands that all practices that hinder or endanger the normal growth and affect the physical and psychological development of women and girls should be condemned and eliminated⁵⁶. In the case of *AIDF and HRDA V. Mali*, the African Court of Human Rights held that, adopting laws which encouraged discriminatory practices undermining the rights of women and children was a violation of international commitment and a violation of article 2 of the protocol⁵⁷. This is reiterated in article 5 where it obliges all state parties to eliminate all harmful practices which negatively affect the rights of women and are contrary to recognized international standards. It also obliges states to particularly protect women who are at risk of being subjected to harmful practices or all other forms of violence, abuse, and intolerance. States also must create legislations to prohibit female genital mutilation and all other practices⁵⁸. Cameroon therefore has the responsibility to ensure breast ironing is prohibited through legislation and to create awareness to discontinue this practice.

States further have the duty to protect the girl child from all forms of abuse and guarantee their safety. Article 12 (c) obliges the state to protect the girl child from all forms of abuse, including sexual harassments in school and to provide access to counselling and rehabilitation services to those who suffer abuses and sexual harassment and sanction perpetrators.

Cameroon made the following reservation to the protocol:

55 AFRICAN UNION. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*. Article 2. <https://acortar.link/LhdPEu>

56 *Ibidem*, Preamble.

57 AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS. *Association Pour Le Progres et la Defense Des Droits Des Femmes Maliennes (Apdf) and The Institute for Human Rights and Development in Africa (Ihrda) V Republic of Mali*. Application N° 046/2016, Judgment 11 May 2018. <https://acortar.link/GOpijq>

58 AFRICAN UNION. *Protocol to the African Charter on Human and Peoples'*. Op. cit., article 5(b) Maputo protocol.

“The acceptance of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in African should in no way be construed as endorsement, encouragement or promotion of homosexuality, abortion (except therapeutic abortion), genital mutilation, prostitution or any other practice which is not consistent with universal or African ethical and moral values, and which could be wrongly understood as arising from the rights of women to respect as a person or to free development of her personality. Any interpretation of the present Protocol justifying such practices cannot be applied against the Government of Cameroon”.

In the least, this reservation is not necessary and seems to indicate that the state does not intend to fulfil its responsibility to protect women. It is disconcerting that the state will seek to avoid responsibility through a technicality in language. Who is then to be held responsible in the cases of harmful practices which persist? In its recent report to the African Commission, Cameroon makes no mention about this reservation and breast ironing is only mentioned in the footnote of the report⁵⁹. The State devoted no paragraph to inform whether an awareness campaign was conducted to shed more light on breast ironing as a harmful practice.

3.8 African Charter on the Rights of the Child (ACRC)

The African Charter on the Rights of the Child is very essential in the African human rights system. It makes it clear that the rights and welfare of the child is particularly important and everything concerning a child should be done in his or her best interest. The preamble of this charter recognizes the fact that each child needs his or her physical and mental development. Hence, exceptional care and protection should be accorded with regards to their health, physical, mental, moral, and social development. It also draws attention to the fact that, the situation of the African child is not only unique

59 REPUBLIC OF CAMEROON. State Report comprising the 4th, 5th and 6th Periodic Reports relating to the African Charter on Human and Peoples’ Rights and 1st Reports relating to the Maputo Protocol and the Kampala Convention, (2019). <https://acortar.link/6mXBDN>

but critical due to factors such as tradition and culture which makes them vulnerable to abuse and exploitation⁶⁰. Any custom, tradition or religious practice that is inconsistent with the rights and obligations of the charter is discouraged⁶¹. It is therefore not an excuse to continue harmful practices on girls in the name of culture or tradition.

The best interest of the child in article 4 according to Van Bueren, raises the standard of best interests as a general principle: the best interests of the child are not a primary consideration but “the” primary consideration in all actions concerning children⁶². Regardless of who is in the position, be it an authority or member of the family, the best interest of the child trumps all. This has been reaffirmed by the African people’s court of human rights where the court held that, allowing girls to marry before the age of 18 was a violation of article 4(1) and a failure on the part of the state to fulfil its obligations. It can be inferred from this article that Cameroon has an obligation to make sure any practice which is not in the best interest of the child be prevented.

Article 5 which guarantees the survival and development of the child requires states to do everything possible to ensure that this right is respected. Furthermore in article 16, it is stated that all children should be protected from torture, inhuman or degrading treatment and particular attention should be paid to physical or mental injury or abuse, neglect or maltreatment including sexual abuse while in the care of a parent, legal guardian or school authority or any person who has the care of the child⁶³. All such cases must be investigated and necessary actions taken to prevent such acts and support children who have suffered abuse. In its decision, the African Committee of Experts on the Rights and Welfare of the Child held that it is the responsibility of the state to protect children from all forms of violence⁶⁴. This responsibility is not

60 INTERNATIONAL LABOR ORGANIZATION. *Abolition of Forced Labor Convention, 1957, Preamble*. <https://acortar.link/I2P6oK>

61 Ibidem, article 1(2).

62 VAN BUEREN, G. *Children’s Rights, International Human Rights law*. Op. cit., pág. 337.

63 INTERNATIONAL LABOR ORGANIZATION. *Abolition of Forced Labor Convention*. Op. cit. Article 16.

64 UNIVERSITY OF PRETORIA. Centre for Human Rights. University of Pretoria and La Rencontre Africaine pour la Defense des Droits de L’Homme v. Senegal, Decision No 003/Com/001/20012.

limited only to acts committed by state agents, but also includes acts committed by non–state actors⁶⁵.

In addition, article 21 demands that children be protected against harmful social and cultural practices, and for States to take all measures to eliminate such practices especially those that affect the welfare, dignity, normal growth, and development of the child. Customs and practices prejudicial to the health or life of the child, discriminatory on the grounds of sex or other status must be eliminated⁶⁶. The committee in its general comment emphasizes that this article should not be conflicted with article 1(3) which simply discourages cultural and traditional practices for this article calls for all harmful cultural practices to be eliminated, meaning in no terms does it defend harmful cultural practices based on custom, tradition, religion or culture⁶⁷.

3.9 The Constitution of the Republic of Cameroon

The constitution of Cameroon commonly referred to as the 1996 constitution due to various amendments of previous constitutions is the main law of the country⁶⁸. In its preamble, the state of Cameroon recognizes its obligation in the protection of human rights under international and regional treaties. It makes it clear that everyone has the right to life, physical and moral integrity and no one shall be subjected to torture, inhuman and degrading treatment. The preamble of the constitution also guarantees the conditions necessary for development. The state has the obligation to ensure the physical and mental well–being of children and make sure that they are not subjected to any form

65 AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD (ACERWC). Decision on the Communication Submitted by the Institute for Human Right and Development in Africa and Finders Group Initiative on behalf of Tfa (a minor) against the Government the Republic of Cameroon Communication No: 006/Com/002/2015 Decision No: 001/2018 par. 75.

66 INTERNATIONAL LABOR ORGANIZATION. *Abolition of Forced Labor Convention*. Op. cit. Article 21(a) (b).

67 AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD. *General Comment N° 5 on “State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child Protection”*, p. 51.

68 CAMEROON. Constitution of Cameroon. Law N° 96–06 of 18 January 1996 to amend the Constitution of 2 June 1972. <https://acortar.link/RZIRcd>

of violence or abuse and exploitation⁶⁹. The state also guarantees the protection of women, the young, the elderly and disabled.

According to the constitution, internationally ratified laws and treaties take precedence over national laws. It states in article 45 that duly approved or ratified treaties and international agreements following their publication override national laws, provided the other party implements the said treaty or agreement⁷⁰. It is clear from this article that Cameroon intends to fulfil its obligations under international laws, implying the CRC, CEDAW, CAT, ICESCR, the ACRC and the Maputo Protocol⁷¹ which are treaties that guarantee and protect the rights of the child are applicable in Cameroon for they have all been ratified. Per the constitution, the state has obligations under these treaties to protect the girl child from gender-based violence and other harmful practices. The question however remains if the provision of this article is truly implemented and if international laws automatically become applicable once ratified.

According to Enonchong, the extent to which courts are willing to implement international law over domestic law is not certain⁷². Courts do recognise international instruments as part of domestic law and refer to the constitutional provision affirming Cameroon's attachment to some human rights instruments and other duly ratified treaties as was seen in the case of *Compagnie Commerciale et Immobilière* where the Court held that international instruments were a source of domestic law⁷³.

Courts are however reluctant to go further to review the compatibility of legislative laws with International human rights treaties. This can be seen in the

69 CAMEROON. *Constitution of Cameroon*. 1996. <https://acortar.link/FQfBtl>

70 Ídem.

71 CAMEROON. Single Report comprising the 4th, 5th and 6th Periodic Reports of Cameroon relating to the African Charter on Human and Peoples' Rights and 1st Reports relating to the Maputo Protocol and the Kampala Convention (2020), par. 707.

72 ENONCHONG, L. *The Problem of Systemic Violation of Civil and Political Rights in Cameroon: Towards a Contextualized Conception of Constitutionalism*. A Thesis Submitted for the Degree of PhD at the University of Warwick, 2013, p. 226-230.

73 CEMAC. *Compagnie Commerciale et Immobilière Africaine des Chargeurs Réunis v État du Cameroun Oriental*, Arrêt No. 163/A/CFJ/CAY of 08 June 1971. <https://acortar.link/pg3VII>

case of discrimination on the grounds of sexual orientation. Section 347 of the Cameroon penal code criminalises homosexuality and many people have been arrested and imprisoned for being homosexuals in contravention to most human rights treaties and the constitution of Cameroon which prohibits discrimination. Moreso, the fact that judges in Cameroon are appointed by the State, makes the judiciary not fully independent from the other arms of government. Judges are often torn between upholding the sovereignty and independence of the State and upholding international law. If faced with such cases, they are more inclined to maintaining the coherence of national laws⁷⁴. Again, there are no legal guidelines on how ratified and enacted treaties should be applied, thereby encouraging the continued application of some rights-infringing provisions of the law such as section 47 of the Cameroon Penal Code⁷⁵.

Furthermore, article 65 of the constitution stresses on the fact that the preamble is a part and parcel of the constitution⁷⁶. Akonumbo agrees and reiterates that the rights expressed in the preamble have the same standing and effect as other provisions found in the constitution⁷⁷. Aimé however express that though article 65 states that the preamble is a part of the constitution, it was probably with the intention to absolve the state from responsibility and criticism “or better still, government merely wants to demonstrate its commitment in principle to the UN’s human rights treaties to which it is party to while in practice the situation remains precarious”⁷⁸.

The constitution according to Fombad, is “a complex constitution with many manifestly vague provisions, most of which pay elaborate lip service to

74 METOU, B. “Le Moyen de Droit International Devant Les Juridictions Internes en Afrique: Quelques Exemples d’Afrique Noire Francophone” *Revue Québécoise de Droit International*. 2009, vol. 22(1), pág129–135.

75 CAMEROON. *The Cameroon Penal Code*. <https://acortar.link/46xuq6>

76 CAMEROON. *Constitution of Cameroon*. Article 65 “The preamble shall be part and parcel of the constitution”.

77 AKONUMBO, A. “Hiv/Aids law and policy in Cameroon: Overview and challenges”. *African Human Rights Law Journal*. 2006 vol. 6, pág. 93. <https://acortar.link/p3Y5hy>

78 A IMÉ, C. *An Analysis of Decentralisation under the 1996 Constitution of Cameroon*. Pretoria: University of Pretoria, Faculty of Law, 2019. <https://acortar.link/gqL5mY>

fundamental values like human rights”⁷⁹. Tchoukou also adds that the 1996 constitution does not adequately address human rights as its provisions are extremely limited, and do not provide a comprehensive framework for the protection of children. The constitution only makes mention of the right to health and education of the child and any other right can only be inferred⁸⁰.

From the above it can be seen that through its preamble and the constitution, Cameroon intends to fulfil its obligations under international human rights treaties by protecting and promoting the universal standards of human rights. Nevertheless, in practice it is obscure as judicial practices show that it is at the discretion of the Judge whether to apply international human rights law or not.

3.10 The Cameroon Criminal Code (Penal Code)

The criminal code of Cameroon formally known as the Cameroon Penal code (CPC) is applicable to all within the state equally⁸¹. In the penal code, which was amended in 2016⁸², some acts which by international human rights standards are unacceptable are punished. They include slavery, forced marriage and female genital mutilation and prevention of the growth of organs.

In section 277-2 the penal code states:

“Whoever, in any manner whatsoever, interferes with an organ in order to inhibit its normal growth shall be punished with imprisonment for from 6 (six) months to 5 (five) years and with fine of from CFAF 100 000 (one hundred thousand) to CFAF 1 000 000 (one million) or with both such imprisonment and fine”.

This article has been interpreted by some to mean that the state is by implication, protecting girls from breast ironing. It is important at this point

79 FOMBAD, Charles Manga. “The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?” *Journal of African Law*. 1998, vol. 42(2), p. 86. <http://www.jstor.org/stable/745543>.

80 TCHOUKOU, J. A. *Introducing the Practice of Breast Ironing as a Human Rights Issue in Cameroon*. *J Civil Legal Sci* 3:121, 2014, p. 15.

81 CAMEROON. *The Cameroon Penal Code*. Op. cit. Article 1.

82 REPUBLIC OF CAMEROON. Law N° 2016/007 of 12 July 2016.

to note that extensive academic research has not been carried out on the interpretation of section 277–2. According to Ellong, this section protects the girl child from breast ironing and in so doing protects the family.⁸³ The state in its follow up report to the CEDAW committee, provided it has taken measures to prevent breast ironing. It states, “Breast ironing is punished as an offence relating to the prevention of growth of an organ, pursuant to article 277–2”⁸⁴. However, the state has not explained how it is using this provision to prevent the practice of breast ironing as was posed in other chapters in the last periodic state report⁸⁵ done by the state

The penal code punishes torture according to section 277–3 which states: “*Whoever involuntarily causes death by torture shall be punished with life imprisonment*”. It also states that whereas a result of the torture the victim permanently loses a limb or all, an organ or a sense, incapacitates the victim or the victim becomes ill and unfit, the perpetrator will be punished with imprisonment from ten to twenty years or fine⁸⁶. Considering that breast ironing could be qualified as torture under the definition provided by the CAT and its committee in its general comment⁸⁷. Cameroon has the obligation to ensure the girl child is protected from this act. In addition, anyone who permanently deprives another of the use of any part of an organ or interfere with its use will be punished according to the penal code⁸⁸.

In 2016, the state took a positive step to protect girls from some harmful

83 ELLONG, J. J. *La Protection de la Famille Dans le Nouveau Code Penal Camerounais de 2016*. Cameroon Universite de Douala, 2016, p. 77. <https://acortar.link/JCW0xe>

84 UNITED NATIONS. Committee on the Elimination of Discrimination against Women. *Concluding observations on the combined fourth and fifth periodic reports of Cameroon Addendum Information received from Cameroon on follow up to the concluding observations*. CEDAW/C/CMR/CO/4–5/Add.1 (2017), par. 8.

85 REPUBLIC OF CAMEROON. State Report comprising the 4th, 5th and 6th Periodic Reports relating to the African Charter on Human and Peoples’ Op. cit.

86 CAMEROON. *The Cameroon Penal Code*. Op. cit., section 277–3

87 See UNITED NATIONS. *Convention against Torture and Other Cruel*. Op. cit., article 1. See, UNITED NATIONS. Committee against Torture CAT/C/GC/2 (2008). Op. cit., par. 18.

88 CAMEROON. *The Cameroon Penal Code*. Op. cit., sections 277, 277–2

practices by punishing female genital mutilation⁸⁹ and rape⁹⁰. It should be noted that even though it has been established by the different committees that breast ironing is a harmful practice, it is not *explicitly* listed as one in the penal code nor in any legislation in Cameroon.

4. Weaknesses found in the laws and measures aimed at protecting the girl child in Cameroon

Even though Cameroon has enacted laws and put measures to protect the girl child from violence there are loopholes in said laws and measures which breed a favourable ground for violation. The lack of clear definitions and language in both the constitution and the penal code makes it difficult to implement recommendations and protect the girl child from breast ironing.

The constitution of Cameroon, which all other laws derive their legality from and is said to guarantee the rights of all has been seen to be lacking because the application of said laws are not feasible and the language used is vague. The rights enshrined in the preamble are merely aspirations devoid of any binding effect. According to Fombad, applying article 65 of the constitution which states that the preamble is a part and parcel of the constitution may be regarded as futile because it does not mention who guarantees these rights, when and how they are guaranteed; “the loose, hortatory and obscure language in which these ‘rights’ are couched does not appear to create or impose any sense of legal obligation”⁹¹. Again article 45 of the constitution which is said to be the article paving the way for international human rights treaties to become law is not very clear in its application, neither is there any mechanism to ensure this article is applied. Therefore, the application is left at the discretion of the judges and as stated by Enonchong the extent to which judges are willing to override

89 Ibidem, section 277-1.

90 Ibidem, section 296.

91 FOMBAD, Charles Manga. *Strengthening constitutional order and upholding the rule of law in Central Africa: Reversing the descent towards symbolic constitutionalism*. Afr. tararear. ley de derechos. [en línea] 2014, vol.14, n.2, p. 431.

domestic laws with international human right laws is uncertain⁹². Recently, the State of Cameroon conceded that the “evaluation of the implementation of international human rights conventions by courts revealed a dual tendency. Indeed, some judges consider that these Conventions are part of the block of constitutionality and can therefore only be applied by the constitutional judge. Others however, consider that these conventions are part and parcel of the legal corpus and apply them depending on whether they are self-executing or not”⁹³.

Moreover, the Constitutional Council⁹⁴ which has the duty as per the constitution to review international treaties and ensure they do not contradict national laws before recommending that they are signed and ratified does not have a forum where conflicts in terms of application of said laws under ratified treaties can be referred to by the judiciary and rights holders. According to article 47(1) of the constitution, “The Constitutional Council shall give a final ruling on the constitutionality of laws, treaties, and international agreements”⁹⁵. As afore said, there is no written procedure on how to approach the council where there is an issue with the legality of laws. What then happens in cases where there are legislations or national laws clearly in contravention of human rights? Who gets to resolve such conflicts? Since the Constitutional Council is in no position to entertain such issues, “an unconstitutional provision breaching human rights may continue to apply without any possibility of subjecting it to scrutiny until such a time as the legislature or the executive may deem its amendment or repeal necessary”⁹⁶.

Lastly, Enonchong also noted that the influence of the executive over the judiciary in Cameroon draws a limit to which it can function independently as a credible institution and discharge its duties effectively. This does not only

92 ENONCHONG, L. *The Problem of Systemic Violation of Civil and Political Rights in Cameroon*. Op. cit.

93 REPUBLIC OF CAMEROON. *Single Report comprising the 4th, 5th and 6th Periodic Reports of Cameroon relating to the African Charter on Human and Peoples’*. Op. cit., par. 707.

94 Article 46 of the Cameroon Constitution., “The Constitutional Council shall have jurisdiction in matters pertaining to the Constitution. It shall rule on the constitutionality of laws. It shall be the organ regulating the functioning of the institutions”.

95 Ibidem.

96 ENONCHONG, L. *The Constitution and Governance in Cameroon*. Routledge, 2021, p. 154.

hinder the judiciary from influencing meaningful changes in terms of holding the government accountable, it also prevents the judiciary from protecting human rights and fundamental liberties⁹⁷.

Regarding criminal law, in its follow-up state report to the committee of CEDAW, Cameroon stated that breast ironing is punished as an offence relating to the prevention of growth of an organ, pursuant to article 277-2 of the Cameroon Penal Code which stipulates as posed above that: *Whoever, in any manner whatsoever, interferes with an organ in order to inhibit its normal growth shall be punished with imprisonment...*⁹⁸. The fact that the state is asking for the criminalization of breast ironing to be implied from the above definition is worrisome. This will give leeway for varied interpretations and abuse of the law. First, defining the breast as an organ under the context of section 277-2 and reiterated by the state in their follow up report to the CEDAW⁹⁹ committee is unsettling. The Merriam Webster Dictionary defines an organ as “a differentiated structure (such as a heart, kidney, leaf, or stem) consisting of cells and tissues and performing some specific function in an organism; bodily parts performing a function or cooperating in an activity the eyes and related structures that make up the visual organs”¹⁰⁰. Following this definition, the breast of a woman can only become an organ when she is lactating. It will be demeaning to assume that the breast of a woman is only meant for reproductive purposes, hence qualifying it a reproductive organ due to lactation. Thus, the targeted developing breast of a girl child cannot be convincingly classified as an organ under section 277-2. Developing breasts at that age is part of the natural physical growth associated with the female gender and nothing to do with reproduction nor lactation. Ackerman et al further stress that, the breast is not an organ per se, but a distinctive region of skin and subcutaneous tissues¹⁰¹.

97 *Ibidem*, p. 137.

98 UNITED NATIONS. Committee on the Elimination of Discrimination against Women. CEDAW/C/CMR/CO/4-5/Add.1 Op. cit., par. 8.

99 *Ibidem*

100 Merriam-Webster Dictionary. <https://acortar.link/cNu9hL>

101 ACKERMAN, A Bernard, MD; KESSLER, Galen, MD; GYORFI, TIBOR, MD; TSOU, Hui C, MD; GOTTLIEB, Geoffrey J. “Contrary View: The Breast is not an Organ Per Se, but a Distinctive Region of Skin and Sub-

The wording of the section gives an opening for perpetrators and their defence to exploit the weakness of the legal provisions and minimize the severity of Breast Ironing. The state has not expressly criminalized Breast Ironing through legislation nor taken effective measures to discourage the practice. Although it punishes other crimes such as genital mutilation, the penal code does not contain any *explicit* provision punishing Breast Ironing as recommended by the committee on CRC¹⁰².

From the above it can be seen that though the government of Cameroon has attempted to protect the rights of children against violence, the measures taken are not sufficient. There is no legislation explicitly prohibiting the practice of breast ironing and it will be too forward to interpret the penal code as punishing it. If it is not written, judges will not interpret beyond the words as laws are often interpreted using textual interpretations. According to the preamble “*no person may be judged and punished, except by virtue of a law enacted and published before the offence committed*”¹⁰³. So the state cannot say breast ironing is a crime or someone can be punished for carrying out the practice when there is no enacted law punishing it.

5. The way forward and Conclusion

International and Regional Human Rights bodies indicate that it is necessary and imperative to abolish the practice of breast ironing effect. The Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in his report qualifies harmful practices as persistent practices and forms of behaviour grounded in discrimination on the basis of inter alia, sex, gender and age in addition to multiple and intersecting forms of discrimination that often involve violence and cause physical or psychological harm or

cutaneous Tissue”. *The American Journal of Dermatopathology*. April 2007, Vol. 29, Issue 2 – p 211-218
Doi: 10.1097/DAD.0b013e3180325d6b.

102 The Committee considered the second periodic report of Cameroon (CRC/C/CMR/2) at its 1464th and 1466th meetings (see CRC/C/SR 1464 and CRC/C/SR 1466), held on 14 January 2010, and adopted, at the 1501st meeting held on 29 January 2010, the following concluding observations: CRC/C/CMR/CO/2.

103 CAMEROON. Constitution of Cameroon, Preamble.

suffering, including immediate or long-term consequences for the victim's dignity, physical and psychological integrity and development, education and socio-economic status.¹⁰⁴ Furthermore in its general recommendation, the committee on economic, social and cultural rights urges states to adopt legislation which address discrimination as it is indispensable in complying with article 2, paragraph 2. They are also encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social, and cultural rights. Since breast ironing is not only gender-based violence but also a harmful practice which has long-term physical and psychological traumatic effects on the victims, it is safe to say the state of Cameroon has the responsibility under international human rights law to ensure this practice is stopped and protect young girls from this torturous act.

To conclude, it is particularly important that Cameroon follows the recommendations provided by the different committees of the United Nations, not only to eliminate the practice of breast ironing but also eliminate other harmful practices and gender-based violence against the girl child in Cameroon and making sure that domestic laws conform to international human rights law.

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