

Analysis of bride price from a human rights perspective
Paper presented at the International Conference on Bride Price

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INTRODUCTIONARY REMARKS

Ladies and gentlemen, all protocol observed

I thank Mifumi Project for organising this International Conference on Bride Price and for inviting me to present a paper on the topic of bride price from a human rights perspective. I welcome you all once again to this Conference and I thank you for finding time to discuss bride price and the issues surrounding it.

1. Introduction

Bride price is mandatory payment made by a man to the family from whom he takes a daughter in marriage. The practice, which is prevalent in many parts of the world based on custom, tradition and religion, is such that a prospective husband, usually with the help of his family, provides a substantial sum of money, livestock or highly valued goods to his future wife's family before a marriage can be contracted. It is distinct from *dowry*, which is money or property brought by a bride to her husband at marriage. Bride price is the one, which is most common in Uganda and is the one referred in this paper.

This paper explores the issue of bride price from a human rights perspective and discusses the matter in light of the national, regional and international human rights law. It starts off by discussing the importance and effects of payment bride price before plunging into the legal and human rights issues that arise from the practice. It gives recommendations on what should be done regarding bride price and the issues surrounding it.

2. Importance of Bride Price

Traditionally, the payment of bride price is widely accepted and regarded as a custom meant to honour the woman and her family and is justified for various reasons. It is argued that payment of bride price contributes to the stability of the marriage because the woman's family has an interest in resolving any problems between their daughter and her husband to ensure the stability of the union since they have to refund the bride price if the relationship fails. Furthermore that it strengthens the marriage because it brings together the families leading to acceptance. Also, it is argued that it is given on the basis that the wealth received compensates the bride's family for time, money and trouble taken to raise a daughter who is later sent off to live with another family. Indeed factors like the level of education attained by a woman affects the value of the bride price. Bride price is a sign of fulfilment of a customary marriage giving assurance and confidence to the parties involved.

3. Impact of bride price

Bride price brings together the families of the marriage partners creating stability in the marriage. It also brings about prestige and acceptance in various communities of the parties to the marriage. It usually brings honour and recognition of the family of the woman.

However it has increasingly become a tool of oppression of women because it makes them become a possession equated to a price. In rural areas where the poverty levels are high, the practice has increasingly become commercialised in nature with the parents of the girl or woman extracting as much as they can from

the prospective groom. Due to the prospects of bride price parents view their daughters in terms of the wealth they are likely to bring to the family and young girls (below the age of 18) are usually married off early and kept out of school.

In this regard, payment of bride price reduces women to the status of chattel or property and exposes them to all sorts of abuse, widow inheritance and the risk of HIV infection. Indeed bride price relegates women to 'an article of trade to be bought or sold' because in many instances it implies that the man has purchased the wife to provide labour, he can demand sex at any time and has control over the reproductive capacity of his wife among others. This puts the woman in a vulnerable position where she can be subjected to abuse, making it difficult for her to leave, especially where her family cannot afford to return the bride price or is unwilling to do so. The payment of bride price has contributed to domestic violence and the spread of HIV/AIDS because the woman is completely subjugated under such circumstances.

4. Legality of bride price

Bride price is not particularly provided for under any written law but it is accepted under customary law. Courts can enforce the observance of any existing custom to the benefit of any person as long as it is not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with any written law.

Courts have continuously held that the validity of customary marriages in Uganda is dependant on full payment of bride price. In one case of *Uganda V Kuranimo Oliyo and Another* it was held that:

A customary marriage is only valid where payment of bride price has been completed.

This has been the reasoning in many other cases like *Amulan Ogwang Vs Edward Ojok, Uganda V John Eduku* and *Florence Kemitungo V Yolamu Katuramu*. The return of the bride price by the woman's family to the husband is proof of dissolution of a customary marriage. As long as the bride price has not been returned the marriage still subsists.

In some cases even those wishing to contract civil marriages have been caught up in the payment of bride price. Some places of worship require a letter from the parent or guardian of the bride –to-be consenting to the marriage even where the couple is of age and such consent should not be a prerequisite. Where such consent is required it is likely that the parent or guardian will ask for bride price before giving his/her consent.

However, the payment of bride price can and should be challenged as a custom that is repugnant to equity and good conscience and is incompatible with the 1995 Constitution of the Republic of Uganda. The Constitution provides for equality:

All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

It further provides that:

Women shall be accorded full and equal dignity of the person with men.

Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution.

With regard to marriage the Constitution provides that;

Men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.

Under the Constitution men and women are equal and are entitled to equal rights in marriage during marriage and its dissolution. Payment of bride price, as mentioned earlier usually puts the woman in a vulnerable inferior position and reduces her to a chattel and not equal to her husband. If a husband pays a bride price for his wife, he can confine her to their home; forbid her to work for pay or take her earnings if she works, can beat her for disobedience, divorce her at any time or marry as many wives as he can pay bride price for. Such acts, though regarded as culturally appropriate are closely related to some forms of slavery. It deprives women of their rights to be afforded full and equal dignity with their husbands in marriage. Women in such relationships are enslaved especially if they cannot afford to return the bride price. This makes payment of bride price a custom that is against the dignity, welfare or interest of women prohibited by the Constitution.

Like the Ugandan Constitution, various international human rights instruments provide for equality and that men and women are equal and have equal rights to marriage, during marriage and at its dissolution. The Convention on the Elimination of All forms of Discrimination Against Women to which Uganda is a party, is regarded as the most progressive international instrument on women's rights, because it envisions a broader notion of equality between the sexes, beyond the norm of anti-differentiation, aspiring to eliminate the subordination of women in political, economic, legal, and cultural spheres, and obliges states to craft systemic responses to ensure that equality. It provides:

State Parties shall take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter marriage;
- (b) The same right to freely choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same right and responsibilities during marriage and at its dissolution;
- (d) The same personal rights as husband and wife,...
- (e) The same rights for both spouses in respect of ...property.

This requires that States like Uganda, which are party to the Convention, must ensure that they eliminate discrimination in matters relating to marriage and family relations and ensure protection of women not only by enacting law, which protects the rights of women, but also ensuring that the practice conforms to the law. With regard to bride price, which inherently affects the equality of women, it must not only be outlawed but also measures should be put in place to ensure that such law is implemented in order to fulfil the Convention. The Committee on the Convention of all Forms of Discrimination Against Women has recommended that State Parties that apply other laws like common law, religious or customary law rather than complying with the principles contained in the Convention restrict the rights of women to equal status and responsibility within marriage which contravenes the Convention. Since Uganda is a party it has the obligation to fulfil the Convention.

The more recent Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women also provides for the equality of women and the protection of women from practices that affect their equality and dignity, among others. Although it is not expressly stated it can be implied that bride price is one of such practices. The Protocol provides:

'Harmful practices' means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity.

Payment of bride price is a harmful practice because it negatively affects the fundamental rights of women opening them to various violations. It not only violates women's right to equality and dignity but also can extend to other violations like violation of their right to physical integrity, through domestic violence which can result into loss of life since the payment usually gives the men confidence to beat up their wives. Payment of bride price puts a woman in a position where she may not have physical integrity or access to other rights like health and education.

The Protocol to the African Charter on Women's Rights further provides that

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

- a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;
- b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;
- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;
- d) Protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

It should therefore be the duty of the State to do everything in its power to prohibit and protect women from the negative effects of the payment of bride price. It should also provide support to victims of such practices like bride price that demean the dignity of women and strive to create an awareness of such issues.

5. Challenging bride price as a human rights violation

Challenging bride price is not an easy thing to do because whatever its drawbacks, people are still deeply attached to the practice. It is highly likely that law to ban it or restrict the amount payable, may not be easy to implement. Nevertheless, the practice has to be challenged because it has implications of violating women's rights. It would thus be important that massive sensitisation and education is carried out on the negative effects of bride price and legislation should be enacted to prohibit it. It should be to the effect that any property given or agreed to be given in connection with marriage comes within the definition of bride price but the presents given at the time of marriage without demand should not be included. Both the taking and giving of bride price can be made an offence. In this regard the Domestic Relations Bill, which provides that marriage gifts shall not be an essential requirement for any marriage under the act and where any party to a marriage has given them, and that it is an offence to demand for their return, should be adopted.

However effective implementation of such a law if put in place can only be possible if those affected by bride price make the initiative to cooperate in the legal process and the police must give favourable and encouraging response to such initiation. It is important to note that it is not easy to bring an end to the payment of bride price. Underlying the practice is the socio-religious presumption of the inferior status of women, which cannot be brought to an end by legislation only. In this regard there is need for cooperation with all the government departments, civil society and all citizens to work together to bring to an end the negative effects of payment of bride price. Furthermore it falls within the larger scope of women's rights to equality and protection from discrimination in all spheres of life. The implementation of the Constitution, which espouses women's rights, particularly in eradicating laws, customs that demean the position of women, should be a priority for our government, which has already played a key role in the protection of women's rights.

6. Conclusion and Recommendations

Although the practice of payment of bride price is widely accepted, analysis of both national and international law clearly shows that the practice has implications of violations of women's rights to equality and dignity, among others. Challenging the practice is not an easy process because of its perceived traditional, cultural and religious importance by both men and women not only in Uganda but also all over the world. As such the following recommendations are made:

- There should be massive education and sensitisation of the public on the negative effects of bride price and other issues that affect women so as to bring about a reformation of culture. (We commend the efforts of Mifumi Project in this regard)
- Unsolicited gifts at marriage to the family of the prospective bride should *not* be outlawed. However they should not be claimed back at dissolution of marriage. (The approach taken by the Domestic Relations Bill should be adopted.)
- A law particularly prohibiting domestic violence should be enacted.
- There is need for improvement of the economy because the negative effects of the practice are escalated by the high poverty levels.

I wish to take this opportunity to thank Mifumi Project for organising this conference and the German Technical Co-operation for funding it. I commend the efforts of Mifumi Project in fighting for women's rights particularly in fighting to bring an end to the payment of bride price. The Commission pledges its cooperation and support in your efforts. I thank you all for attending this conference and for listening to me.