

BRIDE PRICE AND GENDER VIOLENCE

A PAPER PRESENTED TO THE PARTICIPANTS AT THE INTERNATIONAL CONFERENCE ON BRIDE PRICE AND DEVELOPMENT

VENUE: MAKERERE UNIVERSITY KAMPALA UGANDA
PRESENTED BY: ALUPO JOSEPHINE LLB M.U.K
DATE: FEBRUARY 16th -18th 2004.

INTRODUCTION:

Bride Price

Payment of bride price is recognized under the law of customary marriages

Registration Decree: this is a practice in most districts of Uganda involves payment in cash or property by husband and his family to the Brides family. It is symbolic of friendship but in actual fact it's the transfer of productive and reproductive service to the man's family.

Bride price is a central feature in many of the marriages in Uganda. It is one of the features under which it is demanded by the relatives either before or after the actual marriage ceremony. This is to comply with the customary obligation. The question or issue which arises whether the custom of giving and receiving bride price is consonant with the current international concern over Women's Rights? Does it compromise the African women's dignity? More specifically does it constitute discrimination against women?

The U.N declaration on Rights and Duties of Man, 1948, is to the effect that:

"It's deemed incompatible with Human dignity and with the welfare of the family and society. Prevents their participation on equal terms with men in political, social and cultural life of their countries and is an abstract to the full development of the potentialities of women in the service of their countries and of humanity".

To a certain extent the continued existence of the custom does demand the subservience of women. It's upon this background that we would like to determine whether the custom of Bride Price perpetuates an outdated traditional African attitude which considers women inferior to men and objects for male dominance. And what is the way forward? Is a question for debate.

Violence:

On the other hand it is the use of force and other ways of causing suffering and pain to a person or people. Violence against women manifests itself in different forms which include armed violence, rape, incest, battery, slaughter, sexual harassment and other forms of sexual abuse as well as psychological torture.

BRIDE PRICE AND VIOLENCE

Instances where Bride price is a major factor contributing to domestic violence in the relationships

The issue here is whether bride price is a commercial transaction with the marriage being valid only when bride -price has been paid. It has sometimes been referred to as the basis for the claim that women are exchanged for goods as if they were commodities, normally there is bargaining between the parties concerned.

Notwithstanding the legal restrictions regarding applications of customary law, (V12 incompatibility and repugnancy clause), a lot of women have suffered and had their rights violated because of bride price payment. Once the man has paid Bride Price the woman is reduced to the status of property because the man

has paid for her. She not only becomes part of the property but even what she works for becomes part of the husband's family property because they paid bride price.

This practice however undermines women's dignity and welfare and is prohibited by the constitution according to article 33(6). It forces a woman to live under an intolerable and hostile family environment subjects her to servitude and slave like conditions hence leading to violence against women, when the marriage breaks down. Dissolution of marriage in itself is not easy to obtain under customary laws in Uganda. The woman is always to blame and divorce is related to her domestic failure.

Once bride price is paid, it's used by the family for the male relatives to marry, by the time it's demanded back there is often nothing to pay back. The burden always falls on her to pay. This is not possible for the poor woman. If she goes back home she is forced back to stay with the husband since there is nothing to pay back.

Further still women divorcees are not easily accepted by their own parents because the society's mistaken view is that the failure of their marriage is due to their having not been properly brought up under proper instructions, worse still the failure is seen to reflect on the character of the woman's parents.

Thus the woman cannot even marry another man because she is bound by the fact that bride price is not yet returned and she is still under the same man.

It goes without mention that women are expected to sacrifice themselves i.e. to endure the harassment and mistreatment by their husbands for the sake of children, if such a woman leaves her children behind to suffer she cannot be accorded sympathy by the community. This clearly shows that payment of bride price has serious implications on the woman and hence reducing her status to that of property. This causes violence like lack of maintenance; verbal assault, forced sexual intercourse, lack of consortium may mean a) sexual rights, b) company of the partner and many others.

Many girl children are affected by the institution of Bride Price. The constitution gives children a right to education however the girl child faces more constraints on her access to education,

Bride price has been one of the factors that causes the parents to withdraw a girl child from school and arrange marriage hence interfering with her right to choose a spouse of her will.

The customs consider a woman's primary role as that of wife and mother. Their main aim is to force girls into early marriage so as to obtain bride wealth. Bride price has also been associated with widow inheritance especially among the Iteso, Banyankole, Langi, Alur, Acholi for example. In societies which practice it, a widow is expected to remarry a man from within her deceased's husband's clan because the bride price paid ties her to the clan and she is regarded as serving the clan in place of her husband (regarded as property to serve the clan). In case of the death of the spouse and restricting her ability to choose a partner from outside the clan, if she wishes to marry non clans man, the Bride price is expected to be returned to the clan. Thus the effect of bride price nullifies the constitutional provisions on free choice of spouse.

As if that is not enough the relatives of the deceased husband will not allow the woman to move with any property. Their view is that once a woman is married everything she produces belongs to the husband.

The issue of Bride Price however does not remain only at that. It also affects the sexual and reproductive rights of a woman. One effect of payment is that the husband is entitled to sexual intercourse with the wife who has no right to refuse, regardless of the reason for e.g. adultery by the husband and the risk of HIV/AIDS. In communities such as Banyankole wife sharing among clans mates is practiced and has been related to bride price. In addition the wife is still required to repay the wealth he has transferred to her family if she leaves the marriage.

BRIDE PRICE AND THE PARTICIPATION OF THE YOUTH

In my view and what I have seen especially in Teso, Youth do not participate in the area of how much should be paid or during the process of negotiations. Usually it's the clan elders who know the customs, not even the women are part of these negotiations.

The youth only come up to arrange and do preparations for the ceremony. Thereafter the father of the girl can choose whom to be given the bride price for marrying. Usually it's the elder brother.

BRIDE PRICE AND IMPROVEMENT OF FAMILY RELATIONS

It is an appreciation to her parents for having looked after her. This is more prevalent among the Baganda. Payment of bride price is a form of recognition as an appreciation of the effort of the parents for looking after her. It is a stabilizer of marriage. This is more prevalent among the Bakiga. The presence of the animals reminds the parents of the girl's marriage.

Among the Langi bride-price is seen as a sign of love if a lot of cattle is paid then the husband loves the woman, if few cattle are paid then the husband does not love the wife very much.

Among the Bakiga it is a reminder that the girl is not cheap and insignificant. The attitude towards the girl in situations of cohabitations is not favourable. When the bride-price is paid the attitude changes and the girl receives respect. Women tend to respect their husbands if bride-price is paid for them.

According to some people bride-price is a source of wealth especially among the Langi. A man who has no daughter is considered poor and one with many daughters is rich.

Another function of bride-price is to compensate the bride's family for the loss of her services. A female family member particularly one brought into the family by way of marriage, was considered especially valuable since she performed household chores and, most importantly ensured the continuation and growth of the family. Hence marriage of a female member was considered a loss to her family and a benefit to her husband's family. The giving of bride-price is therefore considered a quid pro quo for the services which are transferred to the man's family. The gifts also serve as an expression of the husband's or his family's gratitude to the bride's parents for the care they took in bringing her up and in allowing her to marry him.

Bride-price was meant to be a gift to the bride's parents and relatives, it was for having brought up the child from her birth to that day when she was leaving the home. Therefore its effect was a sort of compensation for the work. When the bride-price is paid in the Kiga culture it is a form of strengthening ties between the spouses- because the girl would fear divorcing with threats that the bride-price would be returned.

Among the Kiga bride-price served to remind the brides' family of her presence. The cattle, goods and material gifts remain in her relative's home as a symbol of her presence through the goods and services from her husband. Bride-price did also serve as a marriage insurance and stabilizer and reminder that the wife was not something cheap or insignificant. These gifts and services continue to come to their people after she was married.

Most scholars of family rites have reported that a woman who is properly married is at a higher status than the one who is not. Among the Iteso and other societies such as the Lango, payment is more understood as a recognition of the wife's value both to her husband and to her own relatives. In addition the wife's contribution to the family's subsistence is normally indispensable and so the husband is as much dependant upon her as she is on him.

By paying bride price the man becomes the sole claimant to the wife's sexual favours. However, the husband remains free to indulge in extra marital sexual relationships subject to certain penalties charged by the husbands or fathers of the other women caught doing the same, therefore bride-price payment entitles them to the wife's sexual favours whenever they feel like. The right over the girl is transferred from her father to the husband and his family. Before bride price is paid the girl is under her father and his sons' control.

BRIDE PRICE CEMENTED RELATIONS BETWEEN THE FAMILIES AND CLANS

This continues in societies like the Banyankole, Acholi, Langi and Teso who pay Bride-price in form of livestock. It strengthened relationships because once the bride-price is paid the girl's brother transferred it to another clan. It strengthened relationships not only between families but among other families and clans in the area.

The payment of bride-price served to reaffirm subordinate positions of Women as men appropriate to themselves the bulk of the bride-price (cattle and cash). As the owners of the daughters they enjoyed the position of principal beneficiary giving the wives only a few items as tokens of appreciation of their motherhood.

Consequently, bride-price gives the power to control everything as head of the family. Paying bride-price will mean the transfer of rights which mean the women will look after the husband and the upbringing up of children is socially rather than biologically determined. It is then possible that bride-price which is the basis of a marriage determines its' stability, therefore when bride-price is paid in Kiiga culture it was a form of strengthening ties between the spouses because the girl would fear divorcing with threats that the Bride-price would be paid hence the stability of marriages.

HUMAN RIGHTS IMPLICATIONS TOWARDS BRIDE PRICE

Bride price cannot be viewed as a practice. It is identified as an institution which is operating within a societal context tied up with patriarchy and the influences which come from the patriarchy. The human rights implications to the woman and her social status were identified as follows: -

- It's quite contrary to what takes place within the human rights doctrines. There are forced marriages which affect the women and because they do not have choice of spouse this violates Human rights on free consent hence making them into forced marriages, with these marriages the girl child is affected and denied access to education in order to get married because bride price has been paid.
- The impact of property rights, control, access and inheritance are violated because when the husband dies women do not get equal shares the more so losing all things to other family members.
- The impact on number of children one produces. Since she reproduces for the clan due to bride-ride her health is affected because the desire and frequent pregnancies and of labour since she has to continue to work to produce for the clan hence infringing her rights.

More so, although the constitution Art 33(1) avers that "women shall be accorded full and equal dignity of the person with men" this is not the case especially when bride price has been paid. The root cause of most of the hostile behaviour by the husbands is the impact of the attempt of the woman to move out of an unhappy relationship, which due to bride price has been related to domestic violence where in the event of any marital dispute their husbands felt entitled to beat them.

This is contrary to the principle of inviolability of the individual enshrined in the constitution prohibition of "cruel, inhuman and degrading" treatment as well as to the right to health including physical mental and psychological well-being.

Implications for sexual and reproductive rights of women e.g. the husband has a right to sex. The wife too has the right but within the power relations in that union how often could a woman exercise that right? How much both have the right? It's only the husband who has that right.

It has implications for sexual to reproductive rights in relation to adultery. It's the right of the husband to have extra marital relationships but not the wife. In some communities among the Banyankole, there is wife sharing because the clan paid the bride price so that it is "their" wife so they are entitled to have sexual intercourse with her. In some societies there is widow inheritance.

The impact of bride-price continues beyond the death of husband. Art (21) of the constitution states that all persons in all spheres of life are equal and free from discrimination.

In conclusion women and men must have the same right to decide freely and responsibly on marriage matters. By signing the convention, Uganda agrees to take all necessary steps to make rights in the convention a reality for the women in Uganda.

CONCLUSION:

It's conclusive that the payment of bride price may be a source of problems because once something becomes of commercial value a commercial return is expected. Therefore Bride Price charges must not be commercialized and abused, they must go back to the commodities as presents so that men should not abuse it to justify their oppression of women.

Besides that Bride price has lost its original nature and has subsequently acquired undersigned qualities. Mistaken bride price is now more than ever " the price of a woman".

The substitution of money payments for livestock has disrupted the network of reciprocal obligations that formerly linked families together and consolidated marriages some of the parents now see Bride price as an opportunity to extract a lot of cash from a hard pressed suitor.

It's therefore important to note that bride price has lost its former positive functions, it's no longer an efficient method of establishing the validity of a marriage but a mechanism for controlling the distribution of women. It's upon this back ground that I conclude that bride price should not be refunded. It should be looked upon as a gift.

RECOMMENDATIONS:

1. That the requirement of refund of Bride price be outlawed and criminalized.
2. The bride -price should be abolished and replaced with couple-gift from the parents to couples. For purposes of this law, marriage gifts shall be defined to include bride wealth, bride price and other payments made in accordance with customary practice in consideration for a marriage.
3. Bride price should be in form of commodities, which probably are perishable, which cannot be repaid in case of any divorce unlike heads of cattle, which people reclaim when divorced because they can trace their heads of cattle.
4. The major view of the existing laws and customary practices should be under taken and qualitative research promoted with view of formulating and educating laws that are gender sensitive in general and those that recognize and enhance women's rights in particular.
5. Special effort should be made at sensitizing on the subtle relationship between the law and gender related issues.
6. The law enforcement institutions should specially ensure that the right freedoms constitutionally guaranteed and are equally enjoyed. Radical changes in both men's and women's knowledge attitude and behaviours are necessary conditions for the enhancement and promotion of women's rights.
7. A major view of the existing laws and customary practices should be undertaken and qualitative research promoted with a view to formulating and educating on laws that are gender sensitive in general and those that recognize and enhance women's rights in particular
8. Special efforts should be made at sensitizing members of the general public, law enforcement agencies and community leaders on the subtle relationship between the law and gender related issues.
9. **The law enforcement institution should specially ensure that the rights freedoms constitutionally guaranteed are equally enjoyed. Ugandan women live under very different conditions but common to them all is their subordinate status to that of men in every society and culture.**

Radical changes in both men's and women's knowledge, attitude and behaviour are necessary conditions for the enhancement and promotion of women's rights. Men ought to play a key role in the quest for gender equality since in most of our societies men exercise immense power in nearly every sphere of life. It is therefore important to improve communication between men and women with an understanding of their joint responsibilities as equal partners in the homes and appreciating the social significance of bride-price.