

# **International Conference On Bride Price**

**16th - 18<sup>th</sup> February, 2004**

**Held at Makerere University, Kampala, Uganda**

## **Conference Report**



**Box 274 Tororo, Uganda**

**Email:** [mifumi@mifumi.org](mailto:mifumi@mifumi.org)  
[www.mifumi.org](http://www.mifumi.org)

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## Acknowledgements

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Finally our appreciation goes to the participants who made the conference a lively and productive event and who will enable it to achieve its objectives in years to come.

Thank you all.

# **Conference Report**

## **Background to the Conference**

MIFUMI has been working to end violence and abuse against women since 1999 and from this work, bride price was indicated as a major contributing factor to domestic violence. Research on the subject highlighted the fact that the debate on bride price and women's rights was not new (Kalema Report on Marriage and Divorce 1964, FIDA, UNFPA 1996). Women's World Conferences had flagged up the issue of bride price and dowry as contradictions to women's equality and development. Bride price was implicit in international conventions and law.

In 2000 MIFUMI commissioned a baseline survey on bride price that revealed the practice as being rife with injustices and ripe for reform and hence began our two-year campaign project funded by the UK Foreign and Commonwealth Office Human Rights Project Fund. MIFUMI then commissioned papers to examine bride price from a human rights perspective (Kulsum Wakabi: A Briefing Paper on Bride Price, Mifumi 2000), a Bride Price Baseline Survey (Martin Osuna, Mifumi 2001) and a religious perspective (Eriot Deo Fr., Religious and Cultural Perspectives on Bride Price, 2001). The campaign included several consultative workshops and debate forums with traditional leaders, policy makers, and civil society. Drama was also carried out to enact the social issues.

The height of MIFUMI's campaign on bride price occurred on 22nd December 2001, the people of Tororo district in the East of Uganda held a referendum on the reform of bride price, organized by MIFUMI at the end of the two-year campaign. The question was whether bride price should become a non-refundable gift. The referendum was won with 60% in favour of reform. The need for this intervention arose out of our work with women who highlighted the fact that bride price is a major contributing factor to domestic violence and poverty.

## **Planning the Conference**

The idea to hold an international conference on bride price was conceived in Guadalajara Mexico during the AWID (Association of Women in Development) conference when MIFUMI had opportunity to share their work on bride price with participants from Africa and other parts of the world. MIFUMI was encouraged by colleagues to a forum within Africa to disseminate the work on the campaign and referendum. At first we had hoped that a platform would be sought at a Pan African conference, however Juliane Osterhaus of GTZ who was also present at the conference very kindly agreed to consider an application to provide funding for an international conference on bride price.

Once the conference was confirmed UK and Uganda working groups were established. Country working groups commented on conference papers, provided funding, identified keynote and guest speakers and collaborated on the printing of press articles. Initially the conference was due to be held at the Computer Science Institute but due to them cancelling at the last minute, the conference shifted to the Department of Gender and Women's Studies at Makerere University.

Calls for papers went out and we embarked on intensive electronic communication with participants from all over Africa, Europe and USA and in February 2004 - we were ready for the conference. Presenters were asked to prepare a presentation of about 10-15 minutes under the given themes and guidelines for presentations. We also encouraged participants to bring along communication materials that they used in their work. Space was made available for display of the materials.

## **The purpose**

The purpose of the conference was to develop a programme of action to reduce or remove the significance of bride price as a factor contributing to violence and gender inequality, hindering the improvement in the quality of life of families and the realization of the rights of children in the countries where it is practiced.

## **Conference Theme**

The main theme for the conference was Coalition and Action to safeguard women and children in the family. We were clear about wanting women and the gender context recognized and *named* in the theme because although many people would like to consider bride price only as a poverty issue, the MIFUMI campaign arose out of our work with women within the context of domestic violence.

## **Conference Objectives**

- To present evidence and expert opinion on the intersection between bride price and identified socio-cultural practices, and human rights violation, poverty and gender inequality.
- To provide a platform for sharing experiences and innovative approaches across the globe on tackling bride price and other harmful cultural practices.
- To bring together groups and individuals from countries affected by the practice, and representatives from governments, intergovernmental bodies and civil society, to adopt a declaration of action for the reform or removal of bride price.

## **Participants**

The purpose of the conference was to raise awareness about the issue of bride price and its different manifestation across Africa and to rally a Pan African force to spearhead reform. Participants were invited on the basis of their work, knowledge and experience on the issue of bride price and other harmful cultural practices. Many of the participants were also members of the Mifumi Feel Free network established to campaign for the reform of bride price across Africa and the conference was in a way the first formal gathering of the forum.

Invitations to the conference also went out to experts in the field of gender violence and human rights and harmful socio-cultural practices that contribute to gender violence and inequality. Experts on reproductive health and rights, activists on the rights of women and children, politicians and other stakeholders from Governments, intergovernmental agencies, academia, the media, civil society organizations and educationists were also invited.

The conference was attended by 150 participants from 18 countries. From an analysis of the participants it was evident that a large number of them were from the civil society organizations particularly those working on gender, health and human rights. A significant number were also from grassroots communities a fact that firmly grounded the issue of bride price as one mainly experienced by rural communities/women. There was also a significant presence from the police force, particularly those from Tororo, and experts in the field of health and HIV/AIDS.

## **Languages**

**The conference was conducted in English but translation into French was available.**

## **Keynote addresses and Plenary papers**

### **Opening Plenary – Day I**

The Mistress of ceremony Evelyn Okoth, Development Education Officer of PROMPT UK welcomed participants to the conference and took care of house keeping issues. Atuki Turner, Director of the Mifumi Project provided introductory remarks on the work of MIFUMI and its campaign against bride price. This was followed by the opening and keynote address by the Guest of Honour Hon. Miria Matembe, MP Mbarara

District and Pan African Member of Parliament. Hon. Matembe's paper was a highly intellectual and interesting paper and declared the conference open.

Also present at the opening were Mr Solbert Deputy Ambassador of the German Embassy, Dorothee Hutter, Head GTZ Kampala, Lynda St. Cooke, Second Secretary of the British High Commission, Marguerite Garling, Regional Human Rights Advisor, British High Commission, Mr Henry Kalule, Deputy Director UNFPA, Dr Gill Hague, Head of School of Policy, Bristol University and Domestic Violence Group, UK, Dr Rita Schaeffer, Professor of Anthropology, Humboldt University and other dignitaries.

## **Plenary Day II**

The keynote address on the second day was presented by Dr Sylvia Tamale Senior Lecturer and Dean of Law at Makerere University in her paper *Women's Sexuality As A Site Of Control & Resistance: Views On The African Context*.

This was followed by Dr Noerine Kaleeba Founder of TASO and Board Chair of Action Aid who spoke on *Multiple Vulnerabilities* drawing on statistics from around the world on HIV/AIDS.

Six Survivors then presented powerful and thought provoking testimonies on the relationship between and impact of HIV/AIDS domestic violence and bride price on their lives.

Dr. Dan Kaye, Lecturer in the Department of Obstetrics and Gynaecology at Mulago Hospital then presented a paper on the *Commoditization Of Sexuality: Implications For Domestic Violence And Reproductive Health*.

This was followed by a presentation by Justice Margaret Oguli, then Director of Legal Department of the NRM Secretariat in her paper *Bride Price And Violence Against Women: The Case Of Uganda*

In the afternoon Mrs Wambui Otieno Mau Mau fighter and women's activist from Kenya and a privileged and honoured guest presented a paper on *Life History And Disadvantage Of Some Cultures (Especially To Women)*

This was followed by Hon. Jane Frances Kuka the renowned Ugandan activist against female genital mutilation and former Minister of Disaster Preparedness. She spoke on *Gender Violence: Female Genital Mutilation In Uganda*.

Dr Jane Okoth from USA spoke about the similarities of bride price to slave like practices and its impact on society. She conducted a straw poll to determine the prevalence of domestic violence and the results found that 75% of those present and voting at the conference had suffered some form of violence in their lives.

## **Closing Plenary – Day III**

The final day was chaired by Ms Naava Nabagesera who interpreted the current domestic relations bill's provision on bride price and other cultural practices. It was then time to close the conference. The Guest of Honour at the closing was Mrs Margaret Sekaggya, Chair of the Uganda Human Rights Commission who presented the closing address in a paper that grounded bride price as a human rights violation in her paper: *Analysis of Bride Price from a Human Rights Perspective*.

After the closing address Ms Naava Nabagesera, Presidential Legal Adviser and Goodwill Ambassador for Mifumi led the conference to vote for the abolition or reform of bride price by a show of hands. The Conference voted overwhelming for the abolition of bride price. The conference then relocated to the grounds in front of Makerere Guest House for a lunch and a colourful closing ceremony. The national anthem of different countries were sung by the participants from those countries and an impromptu song composed as a "bride price anthem" and also sang.

The *Kampala Declaration* an outcome of the conference was read and affirmed by the participants recognizing the practice as a human rights violation, decrying its negative social, economic, health and legal impact on the status of women and calling on National governments to rise to their obligations towards international conventions and laws protecting women and children from inequality.

Mrs Margaret Sekaggya then declared the first International Conference on bride price closed.



## **Conference Keynote addresses**

### **Opening Speech by Dorothee Hutter, GTZ Country Director Uganda**

Worldwide, women and girls are discriminated in the realization of their social, economic and political rights: Rights, which are set out in the international conventions. Women often do not use the existent legal rights due to lack of legal knowledge, fear of social sanctions or resignations from inefficient legal institutions. Women often are especially discriminated in inheritance and family laws, land laws and in their legal status after the death of the husband.

Gender discrimination is not only a result of insufficient legal security of women but also reflects social values and norms, which shape the identities and behaviours of women and men, girls and boys.

At the 1995 World Conference on Women in Beijing, the Federal German Government declared its intention to enhance support for women in the development process by providing legal counselling and social policy inputs.

The contribution to this conference through our project “Strengthening Women’s Rights” represents a step towards fulfilling this commitment.

Apart from that contribution, the project supports innovative pilot activities in over 30 countries in Africa, Asia, Latin America and Eastern Europe.

The focus lies on exemplary development activities of civil society organizations which contribute to the equal participation of women and girls in the social, economic and political development process.

#### **What does the project stand for?**

We want to bring to life and actively apply the international human rights conventions and national declarations as instruments for advancing the rights of women and girls.

Discriminating laws should be overcome to the advantage of women and girls; existing rights should be acknowledged and realised by women.

Our work is based on the legal reality women and girls experience in their day-to-day lives. In many countries, this scenario is characterized by the co-existence of a statutory, customary and religious law.

The project focuses not only on the formal legal institutions but also on informal mediation processes.

It attempts to have an impact towards structured changes beyond the grassroots level to the advantage of women and girls. To achieve this, the project supports lobby and campaign activities to influence state politics.

#### **What do we want to achieve?**

We want that

- Women perceive law as a resource or a kind of capital that they can use to open up possibilities for making their own choices and to acquire the ability to assert their rights.
- International conventions and national laws stipulating women's rights are put into practice and impact on the lives of women and girls.
- Gender-specific discrimination in national legislation and in customary and religious laws is overcome.
- Women make use of the options for exerting political influence that are already open to them at local, regional and national level.
- Women acquire a voice and can assert themselves both in an everyday context and in political reform processes.

Before I wish you fruitful deliberations, I would like to thank the organizers, Atuki Turner and Mifumi Staff, Co-Funders and for GTZ: Juliane Osterhaus, who is unfortunately not able to attend this conference.

## **Speech at the International Conference on Bride Price - Atuki Turner**

### **Who are we?**

It gives me great pleasure to welcome you all here today at this International Conference on Bride Price organised by Mifumi. First I'd like to say something about our identity. By registration we are known as The Mifumi Development Programme. We became Mifumi by a natural process. By marriage to our partner organization in the UK many of you may know us as PROMPT. PROMPT will soon be known as The Mifumi Project UK by an amendment to the Constitution. These are the different types of identify we have had to make sense of before coming to any conclusion of who we are. In much the same way that women struggle to understand who we are and what our place in society is. We were once known as a development NGO but during the bride price campaign and referendum period, a leading journalist, Charles Onyango Obbo, writing about us in the East African described Mifumi as a women's rights agency in Tororo and we suddenly saw ourselves as just that.

### **Mission and Grassroots**

Mifumi is a leading women's rights and development agency with a large constituency of grassroots women's organisations. Our mission is to work with rural-based communities to reduce the burden of poverty. Grassroots and rural based is the uniqueness about MIFUMI. To this end, we run integrated projects in the fields of gender violence, education, healthcare and economic self-sufficiency. Our gender violence intervention programme includes provision of information, legal advice, advocacy and support services to protect women through the criminal justice system, the local and traditional justice systems. We also work to prevent violence through public education and work with young people.

### **Pioneering events**

#### **Rural based services**

We have had a number of pioneering events. We were among the first to provide rural based domestic violence services through an advice centre in Mifumi village, a deeply rural area in 1999 when we established our pilot project.

#### **Safety Forums**

We pioneered a community safety forum to tackle domestic violence and raise the issue as a criminal offence that should not be tolerated. In 2001 we established the first District Domestic Violence Forum in Uganda in Tororo. In 2003, Professor Baer from Germany, a Gender and Law Professor from Humboldt University came to Uganda to train senior police officers on domestic violence in conjunction with Mifumi and the Child and Family Protection Unit, Uganda Police. During this time we opened a dedicated domestic violence police unit in Mifumi. These series of pioneering events have been against the quiet backdrop of work in rural Mifumi with rural women and communities. Today many researchers, students, anthropologists, funders and partners visit Mifumi village as a development site. And our local artists have a popular song known as Mifumi City for where there once was a poor village; there is now a thriving community. Mifumi is a place where people are keenly aware of human rights. It is the place where we receive most of our support and also quite a bit of resistance.

### **Why we did it?**

Along the way of our campaign on bride price - there were stories of men and women that inspired us, there were those that outraged us and then there were those that committed us to action - those were the important ones. There were stories that shocked us into silence and haunted our sleeping and waking hours. Stories that tainted us with a certain guilt of being part of humanity that is capable of evil and shy of action. These stories are now weaved in a cloth around this room for you all to read about.

### **Washing our dirty linen in public**

When we narrated one of the stories about a woman who was demeaned and stripped of all humanity literally, we were criticized by a group of wise men for washing our dirty linen in public. The place where we aired this story happened to be BBC Focus on Africa and the wise men, from *on high* said the outside world would think

we were backward. They said such things happened in the past there was no need to air it now. They said it was a scandal. I sat facing the three wise men from the cultural institution in Tororo district and I regret to say I could not adequately defend my sisters. Yes women are indeed the dirty linen of society and men - are the public. There is hardly a woman who has not at sometime been made to feel that women are not quite equal citizens of society. So when these men said do not talk about the humiliation and degradation of women in public they were really saying do not talk about women's issues among men.

But we are going to continue talking about women's issues until they listen. We will not be silenced and the story of women will not be told over and over again. Because where there is shame - we know there is pride that will not be usurped. Where there is pain there is also fortitude, and where there is loneliness - there is courage and determination. And where we are silent, we are making a statement.

If the story of this woman was a story of the past, then lets have a look at what happens in our civilized world.

**Nisha Sharma :** May 2003 The ordinary girl who turned female icon by jailing her dowry greedy groom. She called police to arrest her groom during the wedding ceremony because a car and 1.2m Rs (\$2500) were being extorted from her father behind the curtains in the form of dowry.

**Kosovo 1997/98:** A woman breastfeeding her baby has the child removed and is raped by soldiers. Afterwards she asks if she may have the crying baby back to breastfeed but the baby is decapitated before her eyes.

**Pakistan 22 June 02:** The gang rape that shocked the world when 18 year old girl was gang raped by 4 men while the village cheered on. This was a punishment ordered by the tribal court because her brother was seen walking with a girl from the higher cast.

**Nearer home. Nigeria 2002:** Amina Lawal is sentenced to death by stoning under Sharia law for the crime of adultery and having a child outside marriage. However 1.3 million signatures were collected by Amnesty International and luckily she won her appeal in September 2003.

#### **And here at home: They are all right here and will tell their own stories**

But what is important to understand is that one woman's story is a story that can be told about any and many women. It can be told about you, about your sister, daughter, mother or grandmother. As the saying goes do not ask for whom the bell tolls, it tolls for you or do ask for whom the drums are beating, they beat for you.

#### **Shouting across Africa**

When we empowered women and men from rural communities to campaign against bride price, when we won the right to put a social issue to ballot, when we asked for formal recognition of this effort from our leaders, they retorted by saying - why do you want to do things in the backyard. They said why shout in the backyard about bride price? Why not do what your friends do and shout about it in Kampala, take it to parliament - ladies and gentlemen, little did they know how long and how deep our dreams were. Today we are here with men, women and young people from USA, England, Germany, Kenya, Tanzania, Malawi, Nigeria, South Africa, Mpumalanga district in South Africa, Cape town, We have people from Kampala, Iganga, Mbale, Tororo, Nagongera and Mifumi. We have people from GTZ, the World Bank, the Foreign and Commonwealth. And we are going to shout about bride price across Africa. And we are going to say NO to the sale of women and girls by men.

#### **Reading up the ladder of privilege**

But it was important that we started this fight in our backyard, so to speak. To quote from Chandra Talpade Mohanty, a renowned feminist scholar who wrote the epistle titled *Under Western Eyes* and exposed the narrow self-interest of western feminism. Mohanty encourages us to read up the ladder. She says

If we begin our analysis from and limit it to the space of privileged communities, our visions of justice are more likely to be exclusionary because privilege nurtures blindness to those without the same privileges. Beginning from the lives of marginalized communities of women, we are able to access and make the workings of power

visible: to read up the ladder of privilege. It is necessary to look up-ward - colonized people know themselves and they know the colonizer.

And indeed during our campaign we had problems finding solidarity with the urban elite and also with educated women leaders from Tororo many of whom do not understand the injustice occasioned by the commercialisation of bride price. Many of them regard it as a cherished custom that should not be tampered with. Issues of poverty, landlessness, girl child education were lost upon them. Many of these urban elite women can afford to cherish bride price. They can even afford to pay for a man. The urban woman can quite easily walk out of a marriage any day without fearing to be bonded over return of the cows. The poor woman cannot bail herself out. It is a shame that the educated elite powerful women did not lend their voice and their influence to our campaign.

It is also a shame that international agencies that purport to promote children's rights did not take up this struggle. One would be forgiven for thinking that the issue of forcing young girls out of school to generate family income through marriage would be a reason to join the campaign. Why for example has UNICEF or SCF not reacted with the same force towards the sale of girls under bride price as they have towards the sexual enslavement of girls under child trafficking? How long will agencies use the excuse of cultural relativism for failing to protect women and children from human rights abuse.

I am pleased to notice that this is at last being picked up as an issue by UNICEF who has incidentally done much on the related issue of dowry in India. As you may have read in our concept note: dowry related deaths have been climbing in India from 999 registered cases in 1985, 1319 in 1986, 1786 in 1987 and a decade later over 3000 women were killed in 1998 alone, according to the UK Government Human Rights report. Girls continue to be married off well before they reach the minimum age of 18, especially in northern India.

### **Standing on the shoulders of giants**

There were many people who inspired us who are here present and many who were not able to come and others who have since died. All of you here have inspired us in some way, others by your work, others by your interest and others by your positive criticism. I shall mention names and forgive me if I sound like an obituary but one of my favourite poems goes – why should good words not be said about a friend until he's dead. Thank you to Hon Miria Matembe for being our voice often alone in the desert but one that never tires of saying what needs to be said, Georgina Ashworth for being a feminist who has taught us to travel lightly along our journey to empowerment and who has done much for the civil, political and economic rights of women. Noereen Kaleeba for giving a home to PLWA's and for showing us that we can do it, and do it in a big way. What TASO means to PLWA's is what I hope MIFUMI will mean to survivors of domestic violence. Jane Francis Kuka for setting up a stampede where angels fear to tread. Thank you to Sylvia Tamale who is quite young and fearless, Margaret Oguli for being there when you need her, and thanks to our activists for fighting their corners in their own way. And finally to our fathers, mothers, brothers and sisters.

### **How we did it**

We did it through baseline surveys, consultations with cultural, religious and political leaders, and with men, women and the youth, we concluded that there was a case to answer on bride price. Many of the groups we consulted gave us excuses why they would have liked to support the campaign, but not just yet. The church said, they did not like to provoke culture, they preferred to co/exist peacefully, the cultural leaders said they were getting threats from the neighbouring cultural leaders, the politicians said they were just about to go for elections and could we re-open the dialogue after they had been re-elected and could count on 5 clear years in power. So we went back to the drawing board adopted a new philosophy. In the beginning our principle was borrowed from the Duluth Domestic Violence Model in Minnesota, USA. The principle was that the community must bear the burden of violence against women. Now we adopted a new principle altogether that said, The Survivor must bear the burden for ending violence. So we engaged ordinary men, women and the youth who campaigned through debate, discussions, dance, drama, song and poetry. Through the apolitical structure of local government we were given permission to hold a referendum. The police provided patrols and managed to keep order where chaos and hostility might have broken out. And the national media, after several hours debate, to their credit came out in favour of our position and provided us with wide coverage. We invited international

observers and sent out the ballot boxes and we won the referendum with 60%. The question was and I put it to you now - Should bride price become a non-refundable gift / YES.

### **These were our supporters – let me describe them to you**

Young girls who are forced into marriage to older men with HIV/AIDS. Young boys forced to leave school in order *to come home son and get yourself a wife before the cows die*. Men, fathers and brothers who are thrown into jail because their daughters or sisters have left abusive marriages and they cannot afford the refund of bride price. And Mothers in laws whose cows that they have saved for and bought are taken away forcefully from them, because women do not own property, and used to pay bride price sometimes even for the daughter of her co-wife. No wonder mothers in law always fight with their daughters in law. Parents with only sons could not afford to marry for them all. And then there were the women tied up in violent marriages unable to leave because of bride price. We were supported entirely by survivors.

### **Women living with violence**

There were women who were lonely afraid, terrified, hurt, humiliated and degraded living with violence in the home. Such women cannot leave a violent relationship because of the bride price.

### **Women forced to return to violence**

There were women who had been cut, maimed, slapped, burnt, sexually mutilated, who had left the relationships but been forced to return because of bride price.

### **Fear in Refuges**

There were women who have left but live in fear because the men still stalk, harass and haunt them in the place where they have sought refuge, in their parents or sisters home. Remember that fear or the threat of fear is a form of violence which is used effectively to silence, control, intimidate or violate all sorts of victims.

### **Women who were killed**

There were women who returned and were killed. There were women who committed suicide.

### **Children**

There were women whose children had been killed because during violence they were used as a shield or weapon.

A journalist asked me the other day what law currently governs bride price. The dual system of law in Uganda means statutory law exists along side customary law and others. Most women in the rural areas are governed by customary law, a law whose main tenet is the subordinate position of women. And this is underscored by the practice of bride price. The law that governs bride price is lawlessness. It is a situation where there is no rule of law and where the principles of natural justice do not apply.

It is a law where women have no land, cannot own property and must leave an abusive relationship with nothing.

It is a law which despite the debate against capital punishment, which has long since been outlawed in many countries, a woman can be killed by her partner and her people seek not criminal action but compensation in the form of a cow or two.

It is a law where women have no protection from health risks such as HIV/AIDs because the payment of bride price renders the notion that a man has purchased his wife's labour, sexual consent, and perpetual obedience.

It is a law where despite corporal punishment being outlawed in schools and even in some prisons, men say they beat wives to discipline them. Even though research has shown that education is a more effective tool and violence does not resolve conflict.

There were men who feared that removing bride price would result in undisciplined women who would walk out of marriages because of a slap.

But we know that violence begins with a small action like a slap and can lead to death.

Men also say removing bride price will cause prostitution and promiscuity. There is no evidence that shows women are more promiscuous in societies that do not practice bride price. Bride Price which goes hand in hand with polygamy allows men to have multiple sexual partners. While women who engage in extramarital relationships are often killed.

The law we have now completely ignores the concept of equality.

### **Lack of support from men**

Then there were those who did not support us and the DRB.

There were many men who did not support our campaign for reasons of power and dominance. Men for whom bride price was a source of authority in the home.

### **Women who did not support us**

There were also many women who did not support our campaign. As the late Grace Akello, Pan Africanist, and writer once said, If bride price is the only way women know of being valued, how will they let it go. We must find alternative ways for women and society to value women. It will indeed be difficult to change this attitude because the current proposed domestic relations bill that is currently making its passage through the Uganda parliament equates the ability to keep a wife to wealth. The more wealthy you are the more wives you can own. Court will provide a method of means testing for wife purchase. It is a contradiction that we meet here from all corners of the world to fight the commercialisation of marriage while the Domestic Relations Bill proposes just that in the name of religion.

### **Cultural leaders**

Our cultural leader, sat on the fence on this matter, until the eleventh hour. Then they attempted to sabotage the referendum by announcing on the night before the referendum that the cultural institution had nothing to do with the campaign and cultural ministers went round asking people not to vote and saying it was illegal.

### **Uganda**

If Uganda is considered highly progressive in terms of women's equality, then that is in the area of formalities by numbers and names. Affirmative action for women at university and in political offices. But when it really matters we fare worse than some of our less boastful sister countries. People argue that culture should be allowed to evolve but for how long will we wait.

The DRB is a case in point, first drafted in 1980, now down to its third generation of women. The Kalema report of 1965, The Report on the Commission of Inquiry into marriage, divorce, and the status of women raised the issue of bride price and found it to relegate women to the status of a chattel, an article of trade; The World Conference on Women, 1975, 1985, 1995, are all struggling to promote equality and rights for women. But that is the legal and political climate relating to women's rights in Uganda. Unlike some countries in Africa, - we do not have a domestic violence act. Culture still exerts a stranglehold over women.

### **What we intend now? Feel Free Reform**

In these our days, many of us have too many commitments. My cousin once asked me when I would be visiting her and when I replied that I'd been rather busy, she said well don't be TOO busy. My friends many of us especially in the NGOs and Academic sectors are too busy. And we can get too busy doing too much and why not, there is money around if you look hard enough. But there is one thing we cannot have too much of and that is time. Once it passes by, there is no second opportunity in the same time and space. Mifumi has the opportunity to fight to reform bride price and we are going to be busy doing just that. Not too busy doing too much else. Just bride price with the goal to end domestic violence. We have established the Feel Free Network for the Reform of bride price across Africa. And will allow nothing be it in the name of religion, culture, legal systems or poverty to stand in our way.

In 1964 the Bukedi bye-law in an attempt to regulate bride price made it an offence to demand more than five cows, five goats and 22 shillings.

In the case of Uganda versus Eduku (1975) HCB 359, the court held that a customary marriage is not valid until bride price has been exchanged. Almost 30 years later, the Domestic Relations Bill proposed to overturn that ruling.

### **In conclusion**

As a lawyer I could quote to you all the laws that provide for the right to be free from slavery, slave-like practices, the right to be free from violence, torture, cruel, inhuman and degrading treatment is recognised in many international conventions.

#### List of Laws

- \* 1995 Constitution of the Republic of Uganda
- \* International Covenant on Civil and Political Rights
- \* Convention Against Torture
- \* African Charter on Human and Peoples Rights

But I will tell you instead a story. This is the story of the Unknown woman.  
Precious legacies have been passed on to us by our foremothers. Committed to action

One day Mrs Evelyn Okoth came to me and as usual disturbed me when I was TOO BUSY and she said, you know what Felista (she even calls me in that old fashioned way) unless you tackle and get rid of this bride price thing, you will never end violence against women. And that surprised me a lot because I always thought of bride price as a cherished custom so I said how do you mean. This is what she told me. I never knew what my aunts meant by bride price is bad. One day one of my aunts, a young girl became pregnant. In those days young girls slept on a raised platform in the compound guarded by an older aunt so that they would not escape to the boys or the boys would not bother them. This aunt of my mothers escaped to her sweetheart and became pregnant. When her shameful secret was discovered the village was assembled and she was stripped naked and tied spread eagle to the ground. They brought safari ants and poured these on her vagina because they said she had wanted the itch so now let her feel it. Then they brought hens round to peck at the ants. My grandmother stood watching this from her kitchen and after a while could bear it no more, she took up a knife and run to the woman and cut the bonds and turning to my grandfather, said, you have killed this child. That child left that village, her home and people never to return. Then my mother understood why her aunts said bride price is bad. That young girl wanted to marry her sweet heart but he was too poor to pay the required bride price and becoming pregnant she had ruined her chances of a wealthy marriage.

### **The song on bride price**

The men asked that we provide them with an alternative source of income if we want to remove the potential wealth of their daughters. There is a song in dhopadhola my language that when a man's wife is in labour, he stays awake all night praying for dawn to come. On one hand he counts five cows on the hand five goats. Ladies and gentlemen let us rewrite the words of this song.

To quote Patricia Macfadden an inspiring feminist writer and activist writing in the journal Feminist Africa; Issue 2, 2003.

Precious legacies have been passed on to us by our foremothers. In her writing on Sexual Pleasure as a feminist choice she writes that the suppression of women is maintained through vigilant cultural surveillance, and had led to the muting of what she defines as our feminist sexual memory and instinct. The result is a sexual and political cul-de-sac of violation and repression; all too often, women find themselves in a dark, dreadful place, windowless and airless, with seemingly no way out.

We must build connections between feminist scholarship and political organizing. The link between political economy and culture remains crucial to any form of feminist theorizing (Mohanty). The unacknowledged power of cultural relativism in cross cultural feminist scholarship.

The women's rights movement has been largely successful in attempting to raise the issue of violence against women onto the world stage. The bodies and labour of women and girls constitute the heart of these struggles.

Finally I have been waiting for a long time to write a book and I intend to dedicate it to my mother but getting published is not an easy thing in these days of bride price. So please allow me one privilege to introduce to you my own mother for it was she that passed on the nightmares of her grandmother's generations to us and asking them to turn them into dreams for tomorrow's children.



**Mifumi Bride Price Conference 16 Feb 2004**  
**Speech by Lynda St Cooke, Second Secretary (Political),**  
**British High Commission, Kampala**

BHC has been engaged with the work of the Mifumi Project since 2000. That year saw the start of our support for the Domestic Violence and Bride Price Project, which ran for two years with funding from the Foreign & Commonwealth Office's Human Rights Project Fund.

The Domestic Violence and Bride Price Project made some real & significant achievements. Its baseline study provided previously unavailable information on attitudes towards bride price and its link to domestic violence in Kirewa Sub County, Tororo district. Its programme of training and education gave women leaders in the community access to skills in leadership and advocacy, women's rights, children's rights and domestic violence issues. What they learned allowed the women to undertake a campaign of advocacy for women's rights and entitlements. They did this through public debates, workshops, seminars, research reports and an information leaflet. They used the media – they wrote many news articles, and ran radio talk shows. They received an excellent response. Thousands of people attended their sensitisation sessions. Many wrote in to the editors of the papers. It all culminated in the referendum they held in 5 sub-counties of Tororo district at the end of 2001 under the auspices of the Chief Administrative Officer, endorsed by the Chair of the Electoral Commission. They won the referendum, with 60% of respondents voting yes to the question of whether bride price should be non-refundable.

We were delighted to be associated with this programme. The energy and commitment of those working at the Mifumi Project was - and continues to be - most impressive. I don't think anyone attending this international conference could be in any doubt about that. The team has continued to work with women leaders and with the community in Kirewa to empower women and increase their voice and their access to justice.

We are therefore very proud to continue our links with the Mifumi Project, and to have been able to offer further support, again through the FCO's Human Rights Project Fund, for their project in Strengthening Traditional Justice for Women. Under this project, Mifumi has continued its excellent work in training and advocacy for women, and working for equality of access to justice. Mifumi has also carried on its lobbying for the reform of bride price, culminating in this conference over the next three days. Bringing all of you together to take part in such an event is a highly impressive achievement. I hope all of you will enjoy the conference, benefit and learn from it, and come out of it having gained as much as I feel we in the British High Commission have from our links over the years with the Mifumi Project.

Thank you very much for the opportunity to be here today, and to take part in this exciting and impressive event.

**Paper presented by  
Hon. Miria –R- K- Matembe**

**On**

**The relationship between Domestic Violence  
and Bride price.**

**At the International Conference on Bride price  
Makerere University, Kampala, Uganda.**

**February 16<sup>th</sup>-18<sup>th</sup>, 2004**

## **Introduction**

I am pleased to have been invited to be a Guest of honour at this International conference on Bride price.

I want to first of all thank the organisers for coming up with the idea of looking at the institution of Bride price, which has affected our society and violated the human rights of women. I want to also thank the German Technical Cooperation (GTZ) on behalf of the German government for sponsoring this conference. I have looked at the topics to be covered so I believe and I am sure that at the end of this conference the participants will have learnt a lot about the institution Bride price and its effects on the lives of women and will come out better informed on how to deal with this problem.

While officiating at the opening of this conference I wish to address myself on the relationship between domestic violence and bride price. But first let me define these terms.

### **Domestic violence**

Domestic violence is an assault or threat against a person by someone she or he lives with. Domestic violence is one of the most prevalent acts perpetrated against women. It is the leading cause of female injury in almost every country in the world and continues to limit women's access to basic human rights. Domestic violence against women includes psychological, physical, sexual, and economic abuse and is perpetrated by an intimate partner such as husband or any other family member within or outside the home. This includes beating, rape, verbal attacks, and the withholding of funds or the denial of food and basic needs such as healthcare. Domestic violence is a universal problem that cuts across all cultures and is found in all nations worldwide. For example in the United States, rape is committed every six minutes, in Peru, 70% of crimes reported to the police are of women beaten by their partners, in Thailand 50% of married women are beaten and, in Ecuador, over 80% of women are beaten. Domestic violence is a major universal problem but it has not been recognised as a specific human rights abuse issue. It was not until 1985, during the UN sponsored conference in Nairobi on Forward Looking Strategies for the advancement of women that the issue was brought on the forefront of the international human rights agenda.

Women are abused because of some traditional beliefs, which subordinate the status of women and relegate them to inferior position compared to other human beings. For instance;

- Some people believe that a man who does not beat his wife does not love her.
- Some men believe that they have a right to beat a wife because they paid bride price
- That women do not grow. They are treated as minors who must be disciplined by beating.
- Other men believe that because they are the providers and heads of the family, they have a right to abuse women and deny them their rights

Domestic violence is complicated in that it is perpetrated by people to whom women are intimately connected. This contradicts the value society attaches to the family as the safest and most pleasant environment for an individual. Women are therefore faced with the dilemma between enduring the violence and taking their partners to the law enforcement agencies. And where they have managed to get to these agencies, victims of domestic violence are often told that the forum is wrong for such private matters. Therefore the right of equal protection under the law remains on paper for women.

Where domestic violence results in physical harm, it affects the women's access to the highest attainable standard of physical and mental health. Injuries resulting from domestic violence are often concealed by women. They engage in self-blame and either choose not to seek for medical attention for fear of exposing the reasons of harm or they tell half-truth for which they get only partial treatment as perceived by the health personnel.

Women who are subjected to domestic violence are extremely humiliated and forced into subordination. As a result the equality of opportunity in the political sphere becomes theoretical because violence affects their capacity to effectively participate in decision-making at the family, community and even national level.

## **Bride price**

Bride price / dowry is the term that refers to material items that are exchanged for a spouse. In Africa where the items are exchanged for a wife it is called bride price and in India where the exchange is for the groom it is called dowry although here in Uganda these two words are interchangeably used as if they mean one and same thing. At times these items are referred to as marriage gifts, marriage wealth and they are either in form of animals such as cows or money or other items such as beer, foodstuffs and clothes. In Ankole they call it Enjugano and Baganda call it Omutwalo but whatever item and whichever name it is called, Bride price undermines the status of women and violates their human rights.

In Africa the so-called gifts, are given by the groom's parents to the parent's of the bride, while in India it's the parents of the bride who give the gifts to the family of the groom. What must be noted is that the bride price/dowry does not go to the bride or bridegroom but to the parents. Yet it is the bride who faces the negative consequences of the institution of bride price.

Traditionally in Africa and in Uganda particular Bride price was on the face of it regarded as a token of appreciation from the groom's family to the bride's family for having brought up a nice girl whom they have now given to the groom's family. It entitled the wife to be a full member of the husband's family. Those days there was no modern time wedding and so Bride price acted as the legal basis for the marriage and a tool for cementing the relationship between the two families.

However in the essence, Bride price was given in exchange of the labour the girl was giving to her family. Now that her services were being transferred to another family something had to be given in exchange for those services. In modern times however the institution of bride price has drastically changed. It has become a mode of accumulation of wealth. The girl's parents look at the girl as a source of income and demand too much from the groom's parents. Once the groom has paid so much, he starts treating his wife as a purchased property. In many cases the husband thinks that they have proprietary rights over their wives since they bought them just as they buy any other item.

## **Negative effects of bride price in the family**

I wish to state that there is a relationship between Domestic violence and Bride price. The institution of bride price/dowry where it is practiced has increased the incidences of domestic violence. It has had far reaching health, economic, social, human rights and legal implications in the countries where it is practiced. Bride price as an institution has negative implications on the rights and status of women. It is a major factor contributing to domestic violence and abuse of human rights in the home.

- In India today, the failure to pay all the agreed upon dowry amount is considered a serious problem. The most severe is "bride burning", the burning of women whose dowry was not considered sufficient by their husband or in-laws. Most of these incidents are reported as accidental burns in the kitchen or are disguised as suicide. The death of his "failed" wife allows him to marry again and to obtain the dowry that his family believes he deserves, and demands for dowry can go on for years. Cultural practices such as the payment of dowry tend to subordinate women in Indian society.

As a result some parents often kill the girl child because they fear to pay the dowry, which is a violation of human rights. The inability of the bride's family to comply with these demands often leads the daughter-in-law to be treated as a pariah and subject to abuse. In the worst cases, wives are simply killed to make way for a new financial transaction of marriage. In India this institution has portrayed the mother-in laws as evil. It becomes an issue of women against fellow women (mother - in law verses daughter- in law).

Despite the existence of rigorous laws to prevent dowry deaths under a 1986 amendment to the Indian Penal Code (IPC), convictions are rare, and judges (usually men) are often uninterested and susceptible to bribery.

Bride price perpetuates the low status of women and keeps them in perpetual bondage. For example most cultures in Uganda demand that Bride price be paid to the male relatives of the woman where women are

exchanged for cattle, money, meat, sugar and salt. Although these gifts are supposed to be tokens of appreciation to the woman's parents often they have been regarded as a price for the woman.

The unfair part of bride price is the demand for its return on the breakdown of marriage. This prevents women from leaving abusive relationships because their families are either unable or unwilling to repay it. In one research study carried out by Law and advocacy for women in Uganda, one woman stated thus:

***“I have been married for five years during which time my husband has consistently battered me. And when I went back to my family, my father rebuked me because my husband threatened to claim his bride wealth he had paid. I have been hospitalised several times and my body is visibly mutilated”.***<sup>1</sup>

It has therefore become a considerable obstacle for women attempting to leave abusive relationships, as one lady explained:

***“I didn’t have any happiness in my marriage. As you know once a man has met your family you find it hard to go back home. Your family members tell you to hang on”.***<sup>2</sup>

Some women have committed suicide as a result they are battered by their husbands; their families refuse to take them back because they cannot return the bride price. What does a woman do, kill herself because she has nowhere to be.

- Bride wealth imposes elements of domination and control and reinforces the concept of women as property, possession and therefore perpetuates the notion of violence against women.
- This practice undermines women's dignity and welfare forcing them to live under an intolerable and hostile family environment that subjects them to servitude and slave-like conditions.
- The promise of Bride Price encourages parents to force young girls out of school in order to be married off for Bride Price. This does not only hinder girls education but it also exposes these young girls to health hazards of early marriages, as we know them.
- Many young couples begin their married life poorer, with the groom having paid the little income he had on Bride price. This contributes to poverty and domestic violence in the family.
- Many young men who cannot afford Bride price simply co-habit. This makes them forfeit many family rights and entitlements, which can be particularly detrimental for the already disadvantaged and vulnerable women. Our law does not recognise co-habitation as a legal relationship. Therefore such a relationship does not confer any rights on the parties. In most cultures a man who has not paid bride price is not recognised in the society.
- Many parents often sell their land, a vital resource, to refund Bride price in case the marriage collapses.
- In a society where women are still valued as property, and do not have equal decision-making powers and status within the family, the existence of rape and brutal attacks on them by their spouses has become a stimulant for HIV/AIDS infections. The words of one victim describes it best:

***“Sometimes I didn’t want sex but we had sex. He forced me. He forced me before we were tested. He was using force on me... I felt there was danger of more force if I didn’t agree to have sex. After testing he would force me to have sex without a condom. I don’t know why he was opposed to condoms after testing and yet he used them for birth control. He said ‘why bother, we’re already victims.’ . . . There should be a law to stop husbands forcing wives to have sex. I would use the law. I’m tired of him and I’m preparing to leave him. I’m tired of playing [having] sex, having children”***<sup>3</sup>.

<sup>1</sup> Project report on the domestic violence study by Law and Advocacy for women- Uganda. April 2002.

<sup>2</sup> Human Rights Watch interview January 11, 2003

<sup>3</sup> Human Rights Watch interview January 11, 2003

### **What the law in Uganda says about Bride Price**

The Constitution of Uganda does not only outlaw discrimination on grounds of sex but it also guarantees equality of sexes before and under the law. The same Constitution dedicates article 33 on the rights of women as follows:

- 1) That women shall be accorded full and equal dignity of the person with men.
- 2) That the state shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.
- 3) That the state shall protect women and their rights, taking into account their unique status and natural maternal functions in the society
- 4) Women shall have the right to equal treatment with men and the right shall include equal opportunities in political economic and social activities.
- 5) That without prejudice to article 32 of the Constitution women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.
- 6) 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.

Yet the institution of Bride price, which discriminates and violates the rights of women, has continued to flourish. There have been attempts for over 40 years to enact the law on Domestic relations. These efforts have now resulted in the current bill on Domestic Relations, which has retained the institution of Bride price. The bill only provides for the abolition of the return of bride price after a failed marriage.

One would wonder why the institution of Bride price has defeated us. In my own struggles for Gender, equality and Women's empowerment I have found out that even women themselves strongly defend the institution of Bride price. When I dug deeper I found out the reason why. Women perceive Bride price as something that gives them value. Women in Africa have generally been regarded as valueless and their value is attached to how much they fetch in form of Bride price and how many boy children they produce for the husbands. So as long as women do not get a substitute that gives them value they will continue to defend the institution of Bride price. My recommendation therefore is that we struggle hard for women's education, which will give them economic empowerment, and knowledge of their rights as full human beings. We need therefore to intensify the struggle for equal rights of women in all fields of life but particularly in education and their economic empowerment.

### **Conclusion**

Bride price is not the only factor that causes domestic violence. Central to the issue of domestic violence is the question of power relations. It is very clear here in Uganda that even in marriages where there is no Bride price paid domestic violence takes place and even in the relationship of mere cohabitation where there is no legal marriage women are battered yet they do not leave these marriages. The influence I draw from such circumstances is that women with or without Bride price paid for them, view these marriages as a source of provision and livelihood and so stay in these violent relationships for lack of alternative.

Therefore in my view legislating against Bride price will not be a solution to discrimination against women. The solution to all these cultural practices that undermine the status of women is in the promotion of their status through education and economic empowerment. Education will lead to increase in women's participation in politics and decision-making positions. On the other hand, eradication of poverty in Africa will go a very long way in contributing to the elimination of Bride price. Strategies for Poverty Eradication are very crucial in this area.

In the mean time we can continue talking and condemning Bride price hoping that as many people as possible who get educated will continue dropping it step by step until the institution dies.

I wish you the best in this struggle and I can assure you of my availability and support in this endeavour.

I now have the honour and privilege to declare the conference open and I wish you a fruitful and successful deliberation

# **Women's Sexuality as a Site of Control & Resistance: Views on the African Context**

**Sylvia Tamale**  
**Faculty of Law - Makerere University**

Keynote Address delivered at the International Conference on Bride price under the theme, "Coalition and Action to Safeguard Women and Children in the Family, "under the auspices of the Mifumi Project, February 17, 2004 at Makerere University, Kampala

## **I. Introduction**

Recently I was invited to give a talk to the members of one of the Rotary Clubs around Kampala. My talk was announced in their weekly newsletter, describing me as "a sexual activist. " I imagine that such a description was on account of my vocal views on sexuality rights. However, by reducing my activism to sexual rights, the Rotarians had missed the forest for the sex trees, losing the big picture for the small. There is a fundamental link between sexual politics and gender oppression, between sexuality and power. Therefore, my activism around sexual politics is part and parcel of my activism against human rights violations generally and for women's rights in particular. In this paper, I try to make clear the interlace between sexuality and gender oppression.

African feminists are keenly aware of the intersection between the human body, gender and politics (see e.g., Collins, 1990; MacFadden, 1992; Awusabo-Asare et al., 1993; Imam, 2000; Machera, 2002; Tamale, 2003; Diallo, 2003). Sexuality holds both positive empowering possibilities but it also represents powerful constraints for women in Africa. In many African contexts the relationship of women to their own bodies is often different from the disembodied, negative relations rooted in the legacy of colonialism. While pre-colonial societies in Africa were not immune to manipulating culture to oppress women the Judaeo-Christian and Arabic cultures, for example, imposed a particular sexuality on African women, i.e. "hyper-developed" and in need of control. This cultural construction facilitated the consolidation of the patriarchal colonial state (McClintock, 1994). In a post-colonial context, the two legacies of these socio-political formations impose a variety of gendered constructs on the African woman.

Patriarchy and capitalism have many tools at their disposal to create and maintain gender roles and relations in our societies. Women's bodies constitute one of the most formidable tools for this purpose. If one imagines the body to be a blank slate at the time of birth, culture then-proceeds to inscribe rules, images, symbols and even hierarchies that give shape and character to that body. Although the texts that culture inscribes on African women's bodies remain invisible to the uncritical eye, it is in fact a crucial medium for effecting social control. The nibs of culture, the law, the media and especially the systems of education are all instrumental in constructing African women's sexuality and desire through the inscriptions they engrave on their bodies. Through the reproductive and sexual control of African women's bodies their subordination and continued exploitation is guaranteed.

But body politics for African women is also possessed of an empowering subtext, reflected through resistance, negotiation, identity, self-desire, pleasure and silence. While silence can work to reinforce oppression, it can also be a tool of resistance and struggle, especially for the marginalized. There is, therefore, a legitimate silence surrounding African women's sexuality, a silence that is safe, unengageable and ambiguous. Here, "silence" is different from the Western feminist approach that normally condemns it and describes it as a total blank while valorising "voice." In many African cultures while speech is necessary and empowering in sexuality, silence can be equally powerful. People should, for instance, have the right to keep secrets about their sexuality; in this case, silence may serve as a powerful tool of rejection of externally imposed projections of our sexuality as African women (Bennett, 2003).

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Human sexuality, as used in this paper, encompasses a wide array of complex elements, including sexual knowledge, beliefs value, attitudes and behaviours, as well as procreation, sexual orientation, and personal/interpersonal sexual relations. It touches a wide range of other issues including pleasure, the human body, dress, self-esteem, gender identity, power and violence. It is an all-encompassing phenomenon that involves the human psyche, emotions, physical sensations, communication, creativity and ethics.

Any analysis of African women's sexuality must, therefore, bring into sharp focus the politics contradictions, anomalies, the interlocking bits and the locations of African women's sexuality. This paper attempts to map out some of the historical and contextual factors that have shaped and influenced the sexuality of African women, thereby exposing its oppressive and disempowering dimensions, as well as its transformative and empowering potential.

Considering the diversity and pluralism amongst sub-Saharan African women there is no claim in this paper for a universal sexuality among this social group. The differences between and among women on the African continent are based on race, ethnicity religion & spirituality, age, educational level, social class, physical ability, geographical location, and so forth. Indeed, there is a danger in essentializing an "African sexuality" and ignoring the various forces that impinge on particular cultures and societies. However, some shared experiences (e.g., colonialism, neo-colonialism, racism and patriarchy) provide a common base from which we can draw some generalizations about African female sexuality (Oloka-Onyango and Tamale, 1995). Hence, the concept of "African sexuality" is used loosely here to acknowledge our common legacies without necessarily obscuring the diversities among and between African women. Case examples are provided from various African countries to illustrate the key issues discussed.

## **II. Early Influences of African Sexuality**

Contemporary constructions of African sexuality have become so deeply etched in our individual and collective consciousness that most of us simply take them for granted. The dominant sexual ideologies that inform our knowledge about men and women's sexuality in most parts of Africa are products of foreign imperial and missionary expansion across our continent. Most significantly, imperialist Christianity and Islam played a major role in erasing our traditional conceptualization of sexuality and sexual symbolism. With these foreign values came new forms of sexuality that either effaced or remodelled indigenous manifestations that had existed on the continent. We have come to believe that rules and norms governing our sexuality have always been the way that we know them today. Nothing can be further from the truth.

Traditional African cultures were full of rich sexual expression, especially by women through dance, dress, song, folklore, poetry, art and other aesthetics. Far from being prudish and coy, African sexuality was relatively liberal and was generally celebrated. Moreover expressions of sexuality were not necessarily confined to the 'private' realm because of the fluidity between the 'public' and 'private' contexts typical of pre-colonial African societies. Men and women enjoyed greater body freedom and body dignity. Female nudity was not necessarily always associated with sexuality. In fact female nakedness was used in many African communities as a form of protest (Ardener, 1975; Mba, 1982; Tamale, 1996). Women were generally in control of their sexuality and possessed an elaborate system of management of their sexual and reproductive health. Most of the knowledge about pre-colonial African sexuality is currently found in the rapidly vanishing oral history and there have been only scant attempts to document it (e.g., Murray and Roscoe, 1998; Berger and White, 1999).

Sexual expression and eroticism was exhibited overtly and subtly through metaphors idioms, signifiers and symbols. It was not uncommon for women to share intimate sexual information amongst themselves in places where they gathered regularly, e.g., at the market place, the communal pounding compounds, the village well, etc. Remnants of these cultures have endured through time and can still be seen in: sexual initiation ceremonies and rituals for young girls (e.g., the *Chinamwali* among the Yao in Malawi, the *Ssenga* of Uganda's Baganda and the *Alangizi* in Zambia); in sexual tattoo patterns and incisions (e.g., the *Nyora* among the Shona in Zimbabwe); a variety of sexual aids and aphrodisiacs in the form of herbal scents erotic oils sexual beads (e.g.,



the *butiti* among the Baganda in Uganda); and through sexually expressive rhythmic dances (e.g., the *minoghe*, *chimtali* and *chwvoda* in Malawi, the *tarab* dance of the East African coast). Sexuality also featured prominently in many parts of Africa as an expression of reconciliation and peace building (Binsbergen, 1999).

Western imperialist caricatures of African sexuality was part of a wider plot to colonize and exploit the 'black race' from the 'dark continent.' Texts from nineteenth century reports authored by white explorers, missionaries and anthropologists reveal a clear pattern of the ethnocentric and racist construction of African sexuality. Narratives equated black sexuality with primitiveness. African sexuality was depicted as primitive, exotic and bordering on nymphomania. Perceived as immoral, bestial and lascivious, Africans were caricatured as having lustful dispositions. Their sexuality was read directly into their physical attributes; and the attributes were believed to reflect the morality of Africans (Gilman, 1986; Commons 1993).

To the western mind, the ignorant, bestial, hypersexual African woman was symbolized in the body of Sarah Baartman, the Khoekhoe woman (pejoratively referred to as the "Hottentot Venus") whose naked body was forcibly taken to Europe in the early 1900s and paraded on the streets of several European cities like an animal in a zoo. Schiebinger (1993: 169) reports that Sarah Baartman was "exhibited like a wild beast" with focus on her buttocks and genitalia "which, for an extra charge, viewers could poke and prod." She was perceived as the "missing link of evolution." Baartman's story epitomizes the brutal racism and sexist savagery that lay at the heart of colonial imperialism. A racist misreading of African cultures such as polygamy and bride wealth and "widow inheritance" reinforced such stereotypes of African women.

By constructing Africans as bestial, the colonialists could easily justify and legitimise the fundamental objectives of colonialism: it was a 'civilizing mission' to the barbarian and savage natives of the 'dark continent.' The imperialists executed tills mission with force, brutality, paternalism, arrogance, insensitivity and humiliation, with the body being a focal target. The French philosopher, Michel Foucault was the first scholar to demonstrate how the human body is a central component in the operation of power (see Foucault, 197,7, 1990). He theorized the human body as being "an inscribed surface of invents" from which the prints of history can be read (Rabinow, 1984: 83).<sup>3</sup> His work has formed the basis for feminist theorizing of the human body and lies at the root of the scholarship of deconstructionists feminists such as Judith Butler, Donna Haraway, Susan Bordo and Julia Kristeva.

The bodies of African women worked to buttress and apologise for the colonial project (Commons, 1993). They were fundamental in the consolidation of the imperialist empire. Juxtaposed against the highly conservative Europe's sexuality, the unique sexuality of Africans, which was largely unrestrained, posed a huge challenge to the Victorian minds of the early explorers. Indeed, Victorian women were not expected to express their sexuality and were required to be sexually frigid (Wolf, 1991). Their dress, behaviour and mores were all geared toward erasing any hint of sexuality. Women who acted otherwise would immediately be branded prostitutes or courtesans (Rees, 1977). So, African women's sexuality was characterized as the antithesis of European sexual mores and beauty. Other myths and stereotypes that were constructed to depict African female sexuality as the 'other' included: "that African women could give birth without pain"; "that Negro women menstruated in greater quantity"; "that Negro women had long and pendulous breasts as an inherited physical Trait" (Long, 1774; Curtin, 1964, quoted in Commons, 1993).

<sup>2</sup> Sarah Baartman died in France in 1816, aged 26 where her remains remained displayed at the Museum of Mankind until the 1970s. In 2002, her remains were finally returned for a dignified burial in South Africa, for a critical re-creation of the racism and sexism at the heart of European imperialism, see the recent novel, *Hottentot Venus*, by Barbara Chase-Reboud (2003, Doubleday).

<sup>3</sup> Frantz Fanon (1963) also alludes, albeit unwittingly, to the link between women's sexuality and colonialism and the process of Afro nation-building. Also see Baines (2003).

Clearly, the depictions of African women as insatiable, amoral, barbaric beings by Europeans said more about their fears, fantasies and preoccupation with sexuality than anything else. Leah Commons (1993:4) says of Western fixation with African women's sexuality:

Rather than being a characteristic of African cultures, sexual obsession was a reflection of the repressed sexuality of the British. By describing the African as a lascivious beast, the Victorians could distance themselves from the 'savage,' while indulging in forbidden fantasies. More importantly, by laying the blame for lust on women alone, colonizers made themselves blameless for their own sexual relations with African women.

Religion, especially Christianity and Islam, stressed the impurity and inherent sin associated with women's bodies (Goodson, 1991). Through religion, Africans were encouraged to reject their previous beliefs and values and to adopt the 'civilized ways' of the whites. This is when the phallo-centric,<sup>4</sup> man-on-top "missionary style" sex assumed dominance, with the aim of countering other forms of more adventurous and exciting sexual connecting. With these new developments came the emphasis on covering and hiding body parts.<sup>5</sup> Indeed, one of the most effective methods of controlling African women's sexuality has been through the regulation of women's dress codes. Perhaps the most notorious post-colonial cases on the continent in this regard, were the draconian laws on women's dressing sanctioned by dictators Kamuzu Banda of Malawi and Idi Amin in Uganda. A new script, steeped in the Victorian moralistic, antisexual and body shame edict, was inscribed on the bodies of African women and with it an elaborate system of control. It is to this hegemony and control of African women's bodies that I turn next.

### **III. Using the Law to Tame the "African Shrew"**

Having constructed the hyper sexed, polygynous female body, the colonialists had made a case for the strict regulation and control of African women's sexuality. This was the final stage in politicising African women's sex and sexuality. Laws were imported from the imperial metropolis to repress and police women's sexuality. Traditional customs, which themselves were not very egalitarian in the first place, were reconfigured to introduce new sexual mores, taboos and stigmas, and the total medicalisation of women's reproduction. The result was a more repressed sexuality akin to the Victorian type. Colonialists worked hand in hand with African patriarchs to develop inflexible customary laws that evolved into new structures and forms of domination (Schmidt, 1991; Mama, 1996).

The need to control women's sexuality and fertility is crucial in patriarchal societies at two levels. First, it is for purely capitalist economic reasons. Male domination under patriarchy generally depends on men's control of resources and their relative economic power over women. These economic relations are reflected within the family where the man, as head of the household, exercises control over the lives of women and children whom are virtually treated as his property. It is essential that the man's acquired property and wealth is passed on to his male offspring in order to sustain patriarchy. Hence, it becomes important to control women's sexuality in order to guarantee the legitimacy of children when bequeathing

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<sup>4</sup> From the Greek word, phallus which means penis. The phallus is a symbol of the penis, which supposedly represents the generating force in nature. Phallo-centric culture refers to a culture that is structured to meet the needs of the masculine imperative.

<sup>5</sup> This can clearly be seen in religious garb such as veils, burkas, jilbabs, wide, ankle-length, full-sleeved loose dresses, etc. property. <sup>6</sup> To this end, the monogamy of women is required, without necessarily disturbing men's polygynous sexuality.

At another level, it is important for capitalist patriarchal societies to separate the 'public' sphere from the 'private' realm. The two spheres are highly gendered with the former representing men and the locus of socially valued activities such as politics and waged labour, while the latter is representative of unremunerated domestic activities performed by women. This necessitated the domestication of women's bodies and their relegation to the 'private' sphere, where they provide the necessities of productive and reproductive social life gratuitously (thus subsidising capital)<sup>7</sup> and are economically dependent on their male partners. Regulating and controlling women's sexuality, therefore, is essential for the survival of patriarchy and capitalism.<sup>8</sup> It represents a vital and necessary way of instituting and maintaining the domesticity of African women. It works to delineate gender roles and to systematically disenfranchise women from accessing and controlling resources. Laws are used by

patriarchal states as a mechanism of regulation and control. Below, I provide some brief examples of sexual laws from the Ugandan legal regime to demonstrate the political and legislative strictures that undermine women's autonomy through the social control of their bodies and their sexuality.

## **Penal laws**

### **(a) Criminal Adultery**

Under the Ugandan Penal Code, a wife is guilty of criminal adultery if she engages in sexual intercourse with any man. A husband, on the other hand, will only be guilty of the same offence if he has sex with a married woman. Here, we see the law blatantly imposing double standards on sexual norms. It essentially endorses male sexual promiscuity (as long as he is not playing around with the 'property' of another man), while imposing strict controls on women's sexuality. This is further proven by the fact that under the Penal Code a convicted adulterer must pay compensation (for damaged goods?) to the husband of the adulteress. Such a law is clearly in line with the ideology of lineage rights in property that guarantees the legitimacy of a man's children that we discussed earlier.

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<sup>6</sup> In *The Origin of the Family, Private Property and the State*, Frederick Engels (1884) made the important link between women's oppression to property relations, demonstrating how monogamous family arrangements facilitate patriarchal domination.

<sup>7</sup> Also by keeping women in a subordinate position, capitalism can justify and profit from paying women who work outside the home lower wages and employing them under worse conditions than men.

<sup>8</sup> In Africa, the process of separating the public-private spheres preceded colonization but was precipitated, consolidated and reinforced by colonial policies and practices. Where there had been a blurred distinction between public and private life, colonial structures (e.g., law, religion) and policies (e.g., educational) focused on delineating a clear distinction guided by an ideology that perceived men as public actors and women as private performers. Where domestic work had co-existed with commercial work in pre-colonial satellite households, a new form of domesticity, existing outside production, took over. Where land had been communally owned in pre-colonial societies, a tenure system that allowed for absolute and individual ownership in land took over. At the same time politics and power were formalised and institutionalised with male public actors. The Western capitalist, political ideology (i.e., liberal democratic theory) that was imposed on the African people focused on the individual, submerging the African tradition that valued the collective.

### **(b) Prostitution**

Last year, the Minister of Health of the Buganda Kingdom announced that he was going to bid for a law that rewards all Baganda brides who are virgins.<sup>9</sup> This was an attempt to curb prostitution and underage sex among Baganda women. Virginity and women's chastity provide ready patriarchal tools for male control of women's bodies.

Under Ugandan law, prostitution is illegal and is penalized by the criminal law. Although the law was amended in 1990 to define a prostitute in gender-neutral terms, womanhood continues to be firmly engrained on the body of a Ugandan prostitute today. The focus of the legislation against prostitution focuses on the "immorality" of women who engage in promiscuous sex. Prostitution endorses polyandry or women taking on multiple sexual partners, something that runs against patriarchal and bourgeois morality. Moreover, it conflicts with the role of domesticity and "mothering" that society has constructed for women. And because it is counter to 'normative' femininity, it represents a threat to patriarchy.

Like rape, prostitution is listed under "Offences Against Morality" in our Penal Code. The important element of prostitution is the indiscriminate character of the intercourse (read, women having greater control of their sexuality). This regime is based on the belief that effective law enforcement and repression can and should reduce prostitution. The fact that the law equates female sexual promiscuity with prostitution is evidence that it is attempting to control female sexuality and maintain male control over women's bodies. Further proof of this is

the fact that the Penal Code limits culpability of this offence to the sellers of sex (the majority of whom are women) and not to the clients (mostly men).

The fact is that prostitution is not about sex, neither is it about morality, but a purely economic issue for women. Commercial sex is work and is about economic survival (and therefore emancipatory) for the women who engage in the profession. In Senegal, a country whose population is over 90 percent Muslim, prostitution has been recognized as work since 1966! In that country, a sex worker may ply her trade as long as she is registered, has regular medical check-ups and is discreet in her trade activities. Prostitutes are also required to pay taxes like any other worker, thus boosting the country's economy. Today, Senegal is one of the countries on the continent with the lowest rates of HIV/AIDS infection, thus exploding the common myth that prostitution fuels the spread of the disease.

### **(c) Abortion**

Abortion is prohibited in Uganda (as is the case in over 40 African countries) with the only exception being to save the life of the pregnant woman.<sup>10</sup> Criminalization of abortion signifies the forceful and violent control of women's bodies by the patriarchal state. It represents a deliberate attempt by the state to force women into motherhood without any promise of help with the child. The fact that it is illegal has never stopped women with unwanted pregnancies from seeking abortions as they consciously take the decision to control their bodies and fertility. Unsafe illegal abortions account for millions of maternal deaths in Africa. Criminalizing the practice is nothing less than institutionalized violence against women.

Imposing forced motherhood on women, coercing them into bearing and rearing children, fits perfectly with the gender roles that society has constructed for women (i.e., childcare and homecare). It leaves little time and room for women to pursue goals outside the confines of domesticity. Thus, the status quo of "private/domestic" women and the "public/political" men is safely entrenched in our society.

<sup>9</sup> See The Monitor, October 14, 2003 at p. 4 where it was reported that Mr. Nelson Kawalya, announced that the Buganda government is in the process of publishing a book on "Virgin Brides."

<sup>10</sup> Such a restrictive legal regime governing abortion pertains in over 40 African countries. Only three countries on the continent, viz., Tunisia, Cape Verde and South Africa, allow for unrestricted abortions.

### **(d) Homosexuality**

The assumptions underlying gender relations in patriarchal societies foreground heteronormativity (i.e., heterosexuality being the norm). The prefix "hetero" (derived from the Greek term meaning 'different' or 'other') means that human sexual relations are 'normatively' expected to take place between members of the opposite sex. Precisely, it assumes a "natural" hierarchy in sexual relations between a dominant male partner and a subordinate female mate (see Butler, 1990). These assumptions are communicated to us through various mediums including religion, culture, education, the law and the media. Women (and men) who resist heterosexuality and subvert dominant culture are subjected to strict punitive laws and discriminatory social discourses.

Compulsory heterosexuality in Africa is legitimised and secured by penal laws that prescribe very strict sanctions against same-sex erotics (usually referred to as "sex against the order of nature"). Homosexuality is criminalized in the majority of African countries through legislation or religious laws such as Sharia. In some countries, like Uganda, the offence carries a maximum life sentence. It is only in South Africa that discrimination on grounds of sexual orientation is prohibited. In a phallocratic culture what is considered to be "natural" is penal vaginal intercourse between a male and a female. By portraying homosexuality as "un-natural", the law maintains the hierarchical sexual conditions of a controlling male and a subordinate female.

A persistent argument against homosexuality (from politicians, religious leaders, scholars and the media) is that homosexuality is "un-African." It is further portrayed as a perversion resulting from Western sexual decadence. But the fact is that there is a long history of diverse African peoples engaging in same-sex relations.

Anthropological and historical studies point to the presence of homosexuality in a variety of forms in pre-colonial times in at least fifty-five African cultures (Murray and Roscoe, 1998; Amory, 1997). In Uganda, for example, among the Langi of northern Uganda, the mudoko dako "males" were treated as women and they could marry men.<sup>12</sup> Homosexuality was also acknowledged among the Iteso<sup>13</sup>, Bahima,<sup>14</sup> Banyoro,<sup>15</sup> and the Baganda.<sup>16</sup> It was an open secret in Royal Buganda that Kabaka (king) Mwanga was gay.<sup>17</sup> Hence, trends both in the present and the past reveal that it is time for Africans to bury the tired myth that homosexuality is "unAfrican". Ironically, it is the dominant Judeo-Christian and Arabic religions that most African anti-homosexuality proponents rely on, that are foreign imports (Tamale, 2003).

The gendered dimensions of sexuality are very clear when we consider the implicit erasure of lesbian identity in African societies. Somehow, the dominant phallo-centric culture maintains the stereotype of women as the passive recipients of penetrative male pleasure; sex that is not penetrative does not count as "real" sex. In fact, African women's sexuality is often reduced to their conventional mothering role, and conflated with their reproductive capacities

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"The long liberation struggle against apartheid forged a political self-consciousness within the gay and lesbian community in South Africa that resulted in this constitutional victory for them. However, this does not mean that gays and lesbians in South Africa enjoy their full rights similar to heterosexuals. For example, same-sex weddings are not recognised in South Africa.

<sup>12</sup> See Jack Driberg, *The Lango*, (London: Thorner Corydon, 1923). Similar practices were recorded among the Iteso and the Karamajong of north-eastern Uganda.

<sup>13</sup> Jeremy Laurance, *The Iteso; Fifty years of change in a Nilo-Hamitic tribe of Uganda* (Oxford: Oxford University Press 1957) <sup>14</sup> Musa Mushanga, "The Nkole of south-western Uganda," in Angela Molnos (Ed.), *Cultural Source Materials for Population Planning in East Africa: Beliefs and Practices* (Nairobi: East African Publishing House, 1973). <sup>15</sup> Rodney Needham, "Right and Left in Nyoro Symbolic Classification," in *Right and Left: Essays on Dual Classification*, 299-341 (Chicago: University of Chicago Press, 1973). <sup>16</sup> Martin Southwold, "The Baganda of Central Uganda," in Angela Molnos (Ed.), *Cultural Source Materials for Population Planning in East Africa: Beliefs and Practices* (Nairobi: East African Publishing House, 1973). <sup>17</sup> John Faupel, *African Holocaust: The Story of the Uganda Martyrs*, (New York: P.J. Kennedy, 1962).

(Tamale, 2001). What is therefore particularly threatening to patriarchy is the idea of intimate same-sex relationships where a dominating male is absent, and where women's sexuality cannot be defined without reference to reproduction. The main factor in the patriarchal equation is missing, that is, power along sex lines, and the preservation of the gender hierarchy.

The mainstream aversion to same-sex relations consequently reflects a larger fear. Homosexuality threatens to undermine male power bases in the African "private" sphere (at the level of interpersonal relationships and conventional definitions of the "family"), as well as in public discourses (where myths abound about what it means to be a man or a woman). Homosexuality presents a challenge to the deep-seated masculine power within African sexual relations, and disrupts the core of the heterosexist social order (Tamale, 2003).

## **Customary Laws**

### **(a) Patrilineality & Patrilocality**

The combined traditions of patrilineality<sup>18</sup> and patrilocality<sup>19</sup> in all African communities collectively entrench patriarchy, mediated through the female body. Historical and anthropological studies on African cultures have confirmed Frederick Engel's theory by revealing that many of the present-day patrilineal African societies were once matrilineal (see e.g., Jjuuko, 1993). <sup>20</sup> It was through some historical interventions such as, private property, the state and religion, that successive generations reshaped descent practices to meet the needs of patriarchy. With the gradual shift from female line of descent to patrilineality came tighter control of women's sexuality to ensure purity and certainty of paternity.

When matrilineality was overthrown, it was not replaced with bilateral descent but by patrilineality (Engels, 1972). Historical evidence suggests, for instance, that the monarchical Baganda in Uganda used to be a matrilineal society. In fact vestiges of matrilineality can still be found in the fact that the Kabaka (king) belongs to his mother's clan. Indeed, tracing descent through women surely makes a lot of logical sense given their role in reproduction. In fact, patrilineality and patrilocality are essential for patriarchal rule. Suppressing and erasing women's lineage as well as insisting that post-marital residence be with the man's family, both work to assure male dominance. Although women in matrilineal African societies enjoy some relative degree of autonomy, no matriarchal society exists on the continent. Matrilineality exists within an entrenched patriarchal context. This means that for all practical purposes, women are subordinated to men even in matrilineal societies; the only difference being that inheritance and authority passes through women to the male of the line.

### **(b) The Institution of Bridewealth<sup>21</sup>**

The term that Western outsiders attached to the African customary rituals preceding a wedding ceremony is pregnant with tell tale signs of their inherent and misconceived biases.

The term "wealth" had connotations of accumulation and possession, values that were not traditionally associated with this African institution. Indeed, all communities on the continent used a specific term for the marriage gift transaction distinct from that used for the payment of goods (e.g., lobola, bogadi, bohali) (see Burman 1990). A woman was free to (and often did) walk out of an abusive marriage and return to her parents and relatives.

<sup>18</sup> Tracing one's descent exclusively through male relatives. <sup>19</sup> The marriage institution where a married woman moves geographically and across the kinship system from her natal home to that of her husband.

<sup>20</sup> In fact, a handful of matrilineal societies still exist in some parts of Africa such as Ghana, Congo, Tanzania, Zambia, Mozambique, South Africa, Malawi, Zimbabwe and Namibia. <sup>21</sup> The traditional practice in which the bridegroom's family 'pays' dowry to the bride's family. Under customary law, full payment of bride wealth is an essential requirement to the legal recognition of customary marriages.

Within these family/clan arrangements men and women jointly made decisions that governed the norms and ethos wife as "the property of their husbands," on the one hand, and the husband, as "the head of the family" on the other, leaves a lot of latitude for women's oppression within the family of their cultural, political, and juridical lives. Driberg (1932: 413) epitomized the pre-colonial idea behind bride wealth thus: It is one side of a legal contract, providing for the filiations of the children and their lawful inheritance: it supplies a religious and ritual sanction, invoking the benevolent regard and interest of the ancestors, from whom the cattle were inherited: it stands as a security for the good treatment of the wife in the new home and serves as a social and political link between the clans of the contracting parties. (Driberg 1932: 413)

The infamous 1917 East African case of R. V. Amkeyo successfully illuminates the misreading of the values behind bride wealth that was typical during the colonial era. In this case, a British colonial judge referred to bride wealth as "wife-purchasing" in total ignorance of its cultural value. He stated: Women so obtained by a native man commonly spoken of, for want of a more precise term, as 'wives' and as 'married women,' but having regard to the vital difference in the relationship of the parties to a union by native custom from that of the parties to a legal marriage, I do not think it can be said that the native custom approximates in any way the legal idea of marriage."<sup>22</sup>

Indeed, in many African countries, colonial law attempted to abolish and later standardize bride wealth which led to conceptualizing it as a purchase deal, in the process denigrating the institution with the concomitant denigration of women's status. Such degrading commodification of African women's bodies was a far cry from the reality behind the institution of bride wealth. Traditional marriage was not a commercial transaction and the parties involved were largely free partners within the context of societies that emphasized communitarian ideals in contrast to individual autonomy.

Sadly, this reconceptualisation of bride wealth persisted. Over the years, African male patriarchs have themselves embraced it to consolidate their power and control over their wives. As a result, *lobola* has been commercialised and women's bodies commodified with no trace of the traditional values that were associated with it. Whatever values originally existed in the African institution of bride wealth, there is no doubt that today

it has evolved into a kind of stamp imprinted on women's bodies to indicate that she is the property of her husband. In a 1995 nationwide study conducted by a Ugandan NGO on "Gender and Inheritance," the link between patrilineality, patrilocality and dowry-payment to women's oppression and disinheritance was brought into bold relief. Study findings showed that infused within inheritance practices was the common notion that wives were part of the inheritable estate. Bride wealth, which today, is construed, as 'payment' by the groom's family to the bride's family was largely responsible for shaping such mentality. The remark of one male respondent in Kumi district was very telling indeed. When asked for his views about women's right to inheritance, his brief retort was: "How can property own property?"<sup>23</sup>

Dowry payment has also legitimated domestic violence in our society. The ever-increasing dowry demands have progressively led to the commercialisation of the institution of bride wealth, which in turn has amplified the commodification of women's bodies.

<sup>22</sup> See Chief Justice Hamilton's judgment in the case of *R V. Amkeyo* (1917) E.A.P.L.R. 14

<sup>23</sup> Women and the Law in East Africa (WLEA), Report on the study of Inheritance Laws and Practices in Uganda, (Kampala; WLEA, 1996).

### **(c) Traditional Sexual Initiation Rites: The Case of Ssenga among the Baganda**

The phenomenon of Ssenga among the Baganda is one of the most powerful cultural inscribers of women's bodies. It is the role of a paternal aunt (Ssenga) to provide sex education to young Baganda girls. Traditionally, such education was comprehensive, with a wide range of topics, from the fundamentals of male/female anatomy, to sexual etiquette, to tips and tricks of bringing pleasure to oneself and one's partner.

Tutelage begun at puberty just before a girl starts menstruating, when she would "visit the bush" under the tutelage of her Ssenga.,<sup>24</sup> Visiting the bush involves a procedure of stretching or elongating the labia minor of a woman. Traditionally, among the Baganda, the meaning attached to this cultural practice was a tightly kept secret that was associated with female enhanced arousal in foreplay. The purported and commonly touted meaning of the elongated labia was that they enhanced erotic pleasure of a man who came in sexual contact with them. Of course this practice was viewed through a completely different light by the imperialists who came across it. They perceived it as a barbaric mutilation of the female genitals and, today it has been condemned and classified as "Type IV FGM"!

With the consolidation of patriarchy and entrenchment of a masculinist sexual hegemony in Buganda, the sexual curricula became slanted with the primary emphasis shifting to the teaching of young brides how to bring maximum pleasure to their husbands during sexual intercourse. Significantly, no similar coaching exists for young grooms. Under the recent liberalization of the Ugandan economy, the institution of Ssenga has become commercialised whereby young women can 'hire' the services of an advertised Ssenga. However, today, this cultural institution has generally been reduced to teaching women how to colonize their bodies to their male partners.

## **IV. Women's Sexuality as a Target of Violence**

The sexualised, gendered and domesticated bodies of African women serve as a prime terrain for playing out power and politics. This is achieved through sexual aggression and violence. Such violence is manifested in various ways ranging from rape, to trafficking, to 'nationalist' causes as happened in the Rwandan genocide of 1994. One of the cases that has come to symbolize the barbarism and misogyny associated with sexual violence in contemporary times is that of Amina Lawal, the 31 year-old woman from Nigeria that was charged with adultery and sentenced to "death by stoning" by a Sharia court in her home state of Katsina.

### **(a) Rape**

The law of rape in Uganda, which is gender-specific, is not only constructed to protect women's chastity, but also men's 'property' in women's sexuality. The fact that the crime of rape is listed under "Offences Against Morality" is indeed telling. By constructing rape within the discourse of morality, the Penal Code places emphasis on a subjective ethical notion while pushing the violent aspects of the crime to the margins.

The insignificance of the assault aspects of the crime of rape can further be seen in the basic legal ingredients that make up the offence: penile-vaginal penetration and lack of consent. The phallocratic culture in which the crime is constructed fails to imagine sexual assaults beyond the narrow confines of the penile-vaginal penetration. To limit the "acts" that constitute rape to (non-consensual) penile-vaginal penetration is to ignore a range of sexual assaults that may even be more traumatic than penile-vaginal penetration (e.g. forced oral sex, anal penetration, penetration with any object, etc.).

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<sup>24</sup> Today, many urban-based sengas are not fulfilling these duties and in their place has emerged some "commercial sengas" who can be hired for a fee by young women or their parents to perform the function of the traditional senga's



Moreover, the woman's consent becomes irrelevant in marital relationships. Thus, rape is "legal" between husbands and wives. In other words, marital rape is an exception in many African legal systems, including Uganda. Justification for the husbands' exemption from the crime of rape stems from an archaic English Common Law rule, which held that a wife's irrevocable consent was given at marriage.<sup>25</sup> However, the simple reality is that patriarchal law considers a wife's body as her husbands' property, which he is at liberty to use as he pleases.

### **(b) Sexual Harassment**

Perhaps the most efficient way of maintaining gender politics in our society is through the mechanism of sexual harassment. Sexual harassment is especially rampant at the workplace and in educational institutions. Through sexual harassment, men objectify women's bodies as a means of maintaining their power and control over them. Women's bodies are also assaulted as a way of silencing them and imposing compliance.

Very few African countries (e.g., Tanzania) have a national policy or law on sexual harassment. Here, we see the law, through an omission, enforcing gender norms; by not criminalizing sexual harassment, the law is maintaining that sense of entitlement for men maintaining the illusion that the "public sphere" is exclusively a male domain. By omitting to legislate against sexual harassment, the African states overtly condone the practice.

### **(c) Female Genital Mutilation**

Perhaps the severest form of controlling and manipulating women's bodies and sexuality is through the cultural practice of female genital mutilation (FGM).<sup>26</sup> In Africa, various forms of the practice are prevalent in approximately 30 countries. Among the communities that practice FGM, the culture is associated with "women's purity" and its proponents argue that it makes women more virtuous by reducing their sexual desires (Toubia, 1995). Whatever spirited defences have been put up to justify female genital mutilation, the bottom line is that FGM coerces women to accept male authority through patriarchal control of their bodies and sexuality. The mutilation of women's genitals through FGM not only violates their bodily integrity, but also their human rights (e.g., sexual and reproductive rights).

Today, open discussion of sexual matters is taboo in most African traditions. Masturbation is also considered a taboo. Such taboos work to repress and deny women knowledge about their own sexuality. For example, not many African women are aware that they possess a sexual organ (the clitoris) that is nothing but a bundle of nerves and twice as erotic and sensitive as the male penis (Ensler, 2001). Thus, by amputating the clitoris (partially or wholly) through the FGM ritual, women are denied their right to sexual pleasure, not to mention the physical and psychological trauma that they routinely suffer. Thus, women's sexual autonomy is curtailed and their sexuality appended and subjugated to that of their husbands.

### **(d) The Role of Women's Bodies Nation-Building and Conflict**

It is not by accident that countries are metaphorically referred to using feminine pronouns. Recent feminist theories have analyzed the way women's bodies symbolize nations because of their roles in reproduction, motherhood and domesticity (e.g., McClintock, 1995; Mire 2001; Baines, 2003). The mother's nurturing and care taking roles are supposed to lovingly draw them close to their children. The imagery of nation-as-mother (e.g., reference

<sup>25</sup> This principle was established by Lord Chief Justice Hale in 1736 when he decided that "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract"

the wife hath given up herself in this kind unto her husband, which she cannot retract.

<sup>26</sup> The practice is commonly and euphemistically referred to as "female circumcision." to motherland), therefore, is meant to conjure strong feelings of nationalism and patriotism within citizens. Furthermore, as mothers and wives, women come to embody the continuity and maintenance of the family and the communities. Hence, women are denied their individuality and perceived as passive extensions of their larger communities. Through the lenses of the female sexuality constructed by patriarchy, women are viewed as chaste daughters who represent the honour, virtue and purity of the family and by extension, the clan, tribe and nation

(Hamilton,1999). If the bodies women signify the nation (albeit in a passive fashion), it is not difficult to see how clan, communal, national, regional and international conflicts come to be played out on women's bodies.<sup>27</sup> Systematic violence (often sexual) inflicted on women during conflict situations is meant to act as a weapon against the entire family, clan, tribe or nation. It symbolizes the pollution of an entire people, not just the individual female victim. Such brutal abuse, marking and violent use of women's bodies was used during colonialism (Fanon, 1963) and more recently in the myriad post\_colonial conflicts that have swept across the continent, e.g. Rwanda, Liberia, Sierra Leone, Angola, the Democratic Republic of Congo and so forth.

## **V Sexuality as a Tool of Resistance & Empowerment**

There is a need for more research and theorizing around the issue of African women's Sexuality. It's through a clearer understanding of our bodies and sexuality, that we can launch a concerted struggle to resist patriarchal control and regulation. In pre-colonial times, women used their sexuality to resist male and colonial domination e.g., during the famous Women's War" in Nigeria (Mba, 1982), as well as the 1958/59 women's rebellion in Cameroon known as *Anlu* (see Ardener,1975). Some recent examples of resistance through violating patriarchal sexual codes include women's social protest against big oil companies in the Nigerian oil delta; Kenya's mothers rising against the illegal political imprisonment of their sons; Kenya's 67 years old politician called Wambui Otieno who recently defied custom and married a man, 42 years her junior.

It is very important for us to openly discuss women's sexuality at this time when increased cultural, religious and political fundamentalisms are finding new ways of safeguarding male power and privileges in this country. We must remove the "mystery veil" from the face of sexuality and expose its true agenda. We need to talk about women's sexual rights out-side the reproduction-violence-morality framework. A big part of the emancipation of African women shall inevitably involve freeing ourselves of the cultural taboos that prevent us from comfortably discussing our sexuality. As African women we must recognize that issues of our sexuality and eroticism have political implications; power and pleasure are definitely interlinked. Sexual freedom is therefore fundamental to our liberation.

An unexpected source of African women's resistance to sexual repression is to be found in the HIV/AIDS pandemic that has ravaged our continent. The pandemic has many ways flung open the doors shut on sexuality. In particular, it has forced into the open the patriarchal myths and secrets in relationships and identities that are often silenced or taken for granted. For women's rights activists , "the personal" had never confronted and intersected with "the political" in so explicit and bold a fashions as it has with contemporary issues of sex and sexuality. Although many of us in the women's movement still find it difficult to rid our consciousness of the "taboo web" that dims our understanding of the intrinsic link between sexuality and women's oppression and subordination, the process of disentanglement has begun.

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<sup>27</sup> Of course male-dominated discourses of public life deliberately exclude women's agency in Africa politics. For example, women's role in liberation struggles are often downplayed or ignored by historical scholars and by the male combatants in post conflict periods (Urdang, 1992; Mire, 2001)

## VI. In Conclusion

-I have attempted to uncover the ways that female sexuality in Africa serves as both a site of oppression and subjection and a potentially crucial site for resistance and emancipation. As African women we must recognise that issues of our sexuality and eroticism have political implications; power and pleasure are definitely interlinked. Sexual freedom is therefore fundamental to our liberation.

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# Multiple Vulnerabilities

By Dr Noerine Kaleeba Founder of TASO and Board Chair of Action Aid

*Multiple Vulnerabilities* drawing on statistics from around the world on HIV/AIDS

## 2 to 1 female to male ratio

- **Biological:** immaturity of the reproductive tract
- **Cultural :** child minders, care givers, bread winner
- **Social:** cross-generational sex, power inequalities, violence
- **Economic:** transactional sex; lack of access to education, training, paid Employment

## Intertwined vulnerabilities

### PRINCIPLES

- ❖ **Women are not victims**
- ❖ **Girls and young women at greatest risk**
- ❖ **Low risk – high vulnerability**
- ❖ **Change is possible**
- ❖ **HIV + women are key**
- ❖ **Men and boys can be positive forces for change**

## Equal access by women and girls to care and treatment

### Set target

**Track uptake** of anti-retroviral therapy **by gender and age**

**Pro-actively** seek out women in need

**Assess barriers** for women and girls to HIV testing

Support /facilitate women's **adherence to medications**

## When prevention messages miss the point

*Messages                  Reality*

- |                  |   |
|------------------|---|
| Abstain from sex | Rape and forced sex – <b>Women don't choose</b>   |
| Be faithful      | "faithful" women infected by their partners ( <b>her situation not behaviour is risky</b> ) |
| Condomize        | Coercion and forced sex – <b>women can't negotiate</b>                                      |

## End 2003 Global HIV/AIDS estimates Children (15 years)

- 1) Children living with HIV/AIDS .....2.5 million
- 2) New HIV infections in 2003 ..... 700 000
- 3) Death due to HIV/AIDS in 2003 ..... 500,000

## Global estimates for adults and children end 2003

- 4) People living with HIV/AIDS ..... 5million (2.5-3.5 Million)
- 5) New HIV infections in 2003 ..... 5 million (4.2-5.8 Million)
- 6) Death due to HIV/AIDS in 2003..... 3 million (2.5 –3.5 Million)

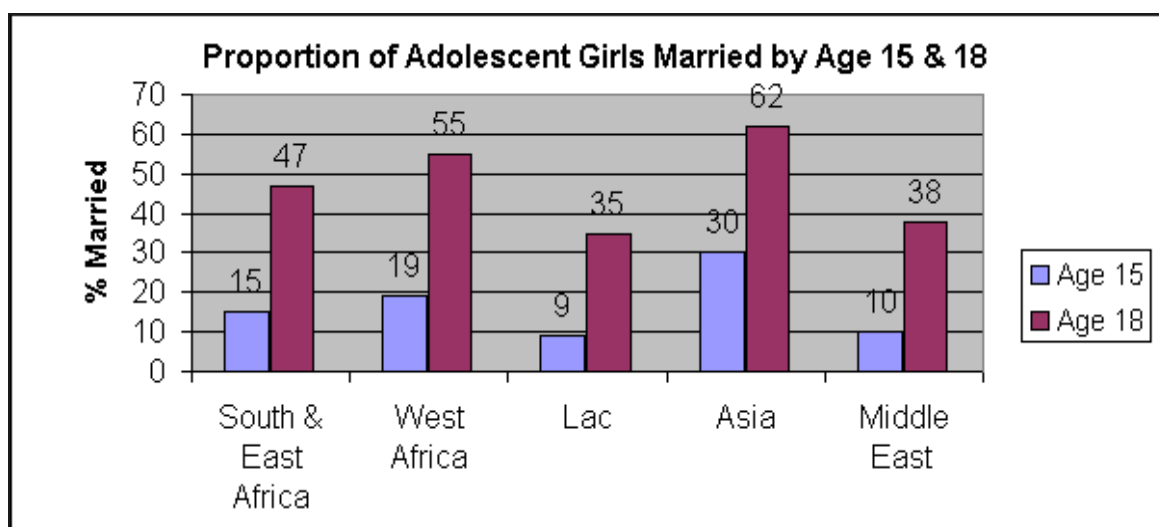
## About 14 000 New HIV infections a day in 2003

- 1 More than 95% are in low and middle income countries
- 2 Almost 2000 are in children under 15 years of age

- 3 About 12 000 are in persons aged 15 to 49 years, of whom:
- 3.1 almost 50% are women
- 3.2 about 50% are 15 –24 year olds

#### Proportion of Adolescent Girls Married by Age 15 & 18

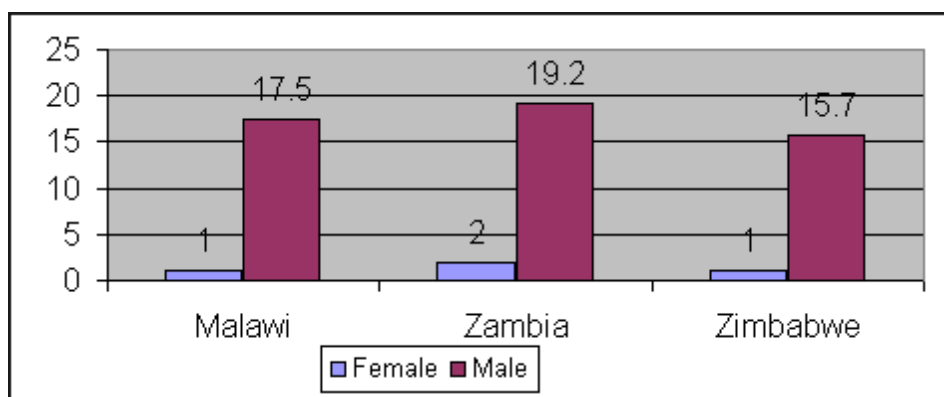
	Age 15	Age 18
South & East Africa	15	47
West Africa	19	55
Lac	9	35
Asia	30	62
Middle East	10	38



#### Men Put their wives at risk

Percent currently married women and men who report having had sexual intercourse with someone else than spouse/cohabiting partner in the last 12 months

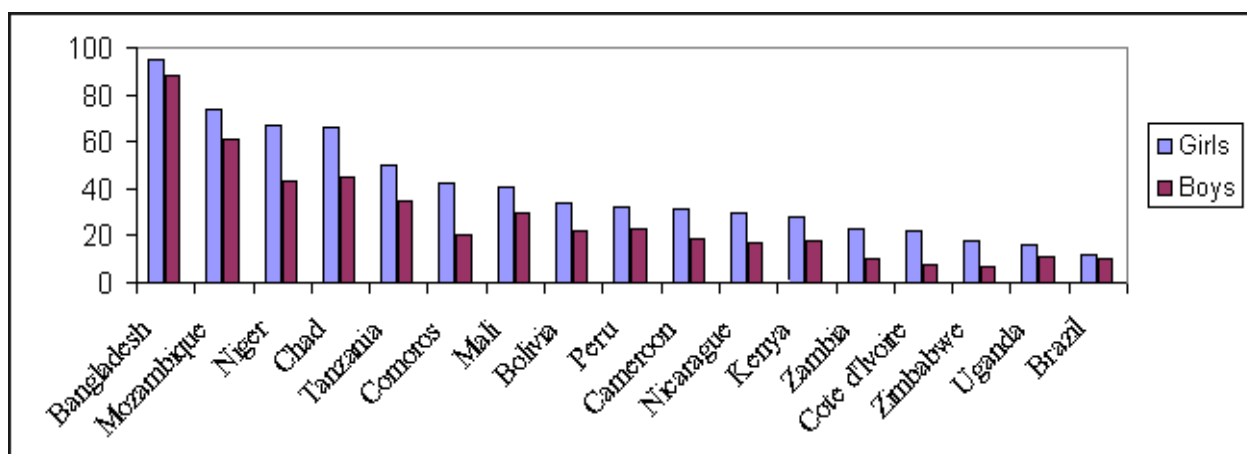
	Female	Male
Malawi	1	17.5
Zambia	2	19.2
Zimbabwe	1	15.7



**Proportion of girls and boys aged 15 - 19 years who do not know how to protect themselves from HIV**

Surveys in selected countries 1994-1998

	Girls	Boys
Bangladesh	95	88
Mozambique	74	61
Niger	67	43
Chad	66	45
Tanzania	50	35
Comoros	42	20
Mali	41	30
Bolivia	34	22
Peru	32	23
Cameroon	31	19
Nicarague	30	17
Kenya	28	18
Zambia	23	10
Cote d'Ivoire	22	8
Zimbabwe	18	7
Uganda	16	11
Brazil	12	10



**Estimated adult and child deaths from HIV/AIDS during 2003**

North America	12000 - 18000
Western Europe	2600 - 3400
Eastern Europe & Central Asia	23000 - 37000
Caribbean	30000 - 50000
North Africa & Middle East	35000 - 50000
East Asia & Pacific	32000 - 58000
Latin America	49000 - 70000
Sub-Saharan Africa	2.2 - 2.4 million
South & South-East Asia	330 000 - 590 000
Australia & New Zealand	>100
Total	2.5 - 3.5 Million

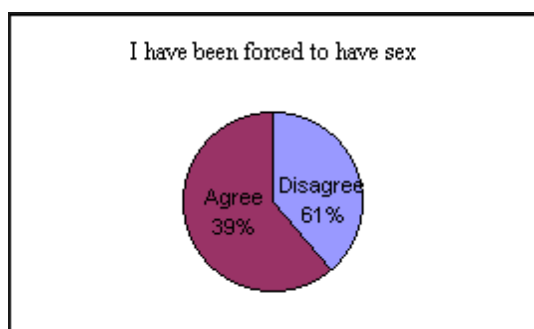


## Adult and children estimated to be living with HIV/AIDS as of end 2003

North America	790000 - 1.2 million
Western Europe	520 000 -680 000
Eastern Europe & Central Asia	1.2 -1.8 Million
Caribbean	350 000 -950 000
North Africa & Middle East	470 000 - 730 000
East Asia & Pacific	700 000 - 1.3 million
Latin America	1.3 - 1.9 Million
Sub-Saharan Africa	25.0 -28.2 Million
South & South-East Asia	4.6 - 2.8 Million
Australia & New Zealand	12000 -18000
<b>Total: 34-46Million</b>	

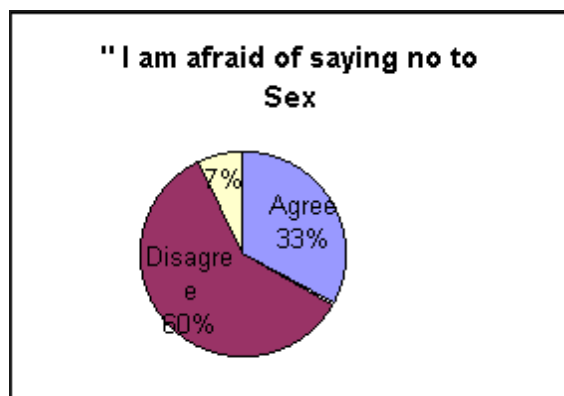
## Percentage of sexually experienced girls in South Africa who say .. "I have been forced to have sex"

	Percentage
Agree	39%
Disagree	61%



## "I am afraid of saying no to sex"

Agree	33%
Disagree	60%
	7%



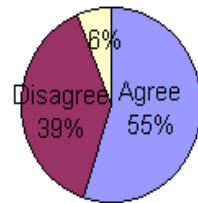
"There are times I don't want to have sex"

But I do because my boyfriend insists on having sex"

Agree

Disagree

**There are time I don't want to have sex  
but I do because my boyfriend insists  
on**



## **BRIDE PRICE AND HEALTH:**

### **Domestic violence and health within the culture of bride price**

**Author:** Dan K. Kaye  
**Affiliation:** Lecturer,  
**Department of Obstetrics and Gynaecology,**  
**Makerere University Medical School,**  
**Address:** P.O. Box 7072, Kampala, Uganda  
**E-mail:** [aogu@africaonline.co.ug](mailto:aogu@africaonline.co.ug); [dankkaye@yahoo.com](mailto:dankkaye@yahoo.com)  
**Fax:** 256-414-533451, **Phone:** 256-414-533451, 0772587952

**Paper presented at the International Conference on Bride Price and Development**  
**Makerere University Institute of Computer Sciences**

**February 16<sup>th</sup> – 18<sup>th</sup> 2004**

#### **Bride price as a gender issue**

Gender is the social construction of men's and women's roles and responsibilities, and the relative value as well as status attached to the socially determined roles and responsibilities. Gender is important for Sexual and Reproductive Health for several reasons:

Gender influences decision-making and access to or control of economic resources and opportunities, between males and females (gender equality). It also influences justice/fairness in distribution of resources according to the value attached to these roles (gender equity).

Gender is related to how we are perceived and expected to think and act as women and men because of the way society is organized, not because of the biological differences.

Bride price as a gender issue affects the broader context of women's lives. This is because gender refers to how people are perceived (or perceive themselves), or perceive any activity, (such as payment of bride price) as determined by the society in which they are. This influences what roles are considered appropriate for them. In different societies, the importance of bride price as a gender issue is dependent on:

- 1 what form it takes (materials or money)
- 2 when is it paid (at what stage of the marital relationship or the woman's life cycle)
- 3 how the payment is made (in one sum, once or in instalments)

#### **Dynamics of bride price payment**

What are motivations for bride wealth?

- 1 Social security (Those who can provide gifts or bride wealth are perceived to be marriageable, more serious about marriage)
- 2 Social status among peers. For women, having been paid for may enhance their social status, especially where they are in favour of the relationship
- 3 Economic security (Rich men and those who can afford to pay a high bride price are perceived to be more likely to support the woman if she became pregnant or sick). Many women with older partners who provide material benefits have young or main boyfriends with whom they maintain a more serious relationship with intention of later marriage
- 4 Social and economic institutions

The amount of money or material gifts exchanged, and the value attached to the gifts by the community are a symbol of what the girl is worth.

This gift exchange increases the prestige of both the man, the woman and the two respective families

**Bride price and health**

*Background conventions*

- 1 United Nations General Assembly's Convention on Elimination of all forms of Discrimination Against Women (CEDAW)

Emphasized equality of the sexes

Article 1 deplores any forms of distinction, exclusion or restriction on basis of sex, which has the effect of or purpose of impairing or nullifying recognition, enjoyment or exercise of rights, by women, irrespective of their marital status

Article 3 calls on member and signatory countries to take up all appropriate measures including legislation, to ensure advancement for women in terms of rights and opportunities

- 2 The International Conference on Population and Development 1994.

In 1994, government delegations from 179 countries and many representatives of civil society met at the International Conference on Population and Development (ICPD) in Cairo, Egypt.

Participants at this meeting reached a consensus that emphasized meeting people's holistic health and development needs.

3. This Programme of Action called for:

Empowerment of women both as a matter of social justice and as the key to improving the quality of life for all people.

Meeting the reproductive health needs of the people through choice and opportunity rather than coercion and control,

Mobilization of resources to meet previously neglected health and social needs.

***Reproductive health***

Reproductive Health is a state of complete physical, mental and social well being and not merely the absence of disease or infirmity, in all matters related to the reproductive system and to its functions and processes (ICPD Programme of Action 1994).

It implies that people should have satisfying and safe sex lives, and have the capacity to have children and to decide if, when, and how often to do so.

**Key Issues about Bride price and health**

It contradicts the four ethical principles on which Sexual and Reproductive Health should be based. These are:

*1 Bodily integrity*

Right of security and control over one's life, including sexual freedom.

In many cases where bride wealth is paid, the women do not take part in the negotiations, and often do not know how much is exchanged. In a way, bride wealth deprives women of sexual freedom and ends up as a way of exploitation of the woman's sexuality through commercialisation or commoditization of this sexuality

*2 Personhood*

The right to self-determination: treating women as principal actors on issues that relate to, affect or influence women's health. They should be subjects on important decisions to make, not mere objects

### 3 *Equality*

There should be equal access to opportunities, resources and power/control over resources between men and women. Where bride price is paid, the impression is that the woman is bought into the men's household, and so the man and his household have absolute powers and control over the woman. In this respect, the woman has little decision-making power in the household.

The 3 dimensions of gender inequality relate to differences between males and females with respect to:

- 1 Power (control over resources, decision-making for key functions at household)
  - 2 Prestige (the woman's status or esteem that is attached to her social position and multiple roles as a wife, mother, society member)
  - 3 Access to resources, opportunities (especially financial)
- Though it may in some situations enhance prestige for some women, bride price tends to worsen the existing gender inequalities and inequities, with serious implications for reproductive health. Gender inequality is of great importance in reproductive health decision making especially:

In making decisions to seek care during medical emergencies

In freedom of movement

In freedom to use reproductive health services, such as family planning, antenatal care, child immunization

Where it reduces on the power and prestige of the woman, the belief that the woman was paid for, belongs to the man and has less decision-making power in the home, such inequality may lead to domestic violence that is sanctioned by the given society and culture

### 4 *Diversity*

Women are not homogeneous, and have different attributes that arise from their different races, ages, tribes, and social classes. There should be respect of the differences between women at all stages of the life cycle. Bride price tends to remove this heterogeneity between women.

### **Effects of bride price on health**

- 1 It perpetuates the gender inequalities and inequities

Bride price may lead to unequal gender power relations in the household and consequent domestic violence. Violence occurs when women try to challenge or overcome the existing gender inequality in regard to power, access to resources, decision-making and prestige, within a given society or cultural context.

Those without economic power are at a disadvantage in negotiating sexual relations. Limited ability of the "commodity receiver" to negotiate safe sexual practices and behaviour, such as use of contraceptives and barrier methods

In order to get bride wealth for men in a given family where there is a girl, the girl may be forced to marry at an early age. His brothers then get the bride wealth to pay for their own wives from other families. This limits opportunities and access to resources to girls and women in their parents' households.

- 2 It leads to commercialisation of sexuality.

Women who are young, educated or from some families may attract a higher bride price than those who are not educated or are older. The bride wealth that is paid may be used by the brothers of the woman for marriage. Likewise, men more well off financially may be more likely to marry off more and even young women.

Adolescents form a large proportion of men's non-marital sexual partners. Commoditization of sexuality may lead to high rates of sexually transmitted infections, including HIV infection with higher rates in one sex compared to the other, or high rates that can not be explained by mere biological factors, at different stages of the life cycle. This may be due to disparity for sex-caused and age-caused differences in the relative proportions of those who are HIV-infected. There is disparity in HIV infection rates between males and females among adolescents and youths, as men, who can afford to marry more women by affording bride wealth, go for younger women, or tend to have multiple partners. Such young women have higher rates of HIV infection than youths or other women of the same age

Many girls who are not married become stigmatised. They may have sexual relations with rich (often older) partners with the hope of improving their marriage opportunities. In case they conceive before marriage, this reduces their potential for marriage. Therefore, such conception may lead to unplanned or unwanted pregnancies, many of which end up as induced abortions with other adverse reproductive health consequences

- 3 The desire to get bride wealth may lead to early or forced marriages, including betrothing young girls. This affects the girl's education opportunities. This may also lead to:

Early marriage and adolescent pregnancy with its complications such as adverse/poor obstetric outcomes

High fertility rate as many women may desire to produce girls in order, once they are married off, they bring wealth into the family to enable their sons to get enough bride wealth to also marry

High school drop out rates in order that girls are married off to get bride price. Girls miss out on formal education. This leaves such girls with little knowledge about health and sexuality issues, life and livelihood skills, poor negotiation skills for safe sex behaviour

Unhealthy attitudes and poor health-seeking behaviour as a result of low self-esteem, lack of knowledge or being financially dependent

- 4 Payment of bride price may perpetuate dangerous practices and cultures or rites such as:

Wife inheritance, which, may lead to polygamy and spread of HIV/AIDS

Cattle rustling. In some societies leads to high rates of injuries and subsequent deaths among men (among the perpetrators) due to violence as they look for cows to use in payment for bride price. There may be sexual violence, rape and other reproductive health consequences among the victims.

# **BRIDE PRICE AND VIOLENCE AGAINST WOMEN: THE CASE OF UGANDA**

**Prepared by: Margaret Oguli Oumo  
18<sup>th</sup> February 2004**

In the evening, we would sit around our mother and she would tell us stories of her childhood. One story that still remains vivid in my memory is the story of her long lost aunt, a story she always told with tears in her eyes.

When a girl gets married, she would tell, the closest person to her, is her aunt. I never had the privilege of having a close aunt at my marriage ceremony because she disappeared when I was still young. Perhaps she ran away and will come back one day! Perhaps she was killed and eaten by an animal! Perhaps she went and drowned herself! One thing I know is that wherever she is, she left home a miserable woman. Her husband would beat her all the time. One time, he bit her with an acacia tree. The thorns of the acacia tree remained on her body. My mother had to remove the thorns one by one and she would scream with pain. When she got well her husband came back.

Then my father, my uncles and my mother would plead with her to go back. When I asked why she had to go back with the cruel husband, they would say “We cannot repay his cows”.

On that day when I saw her last, she greeted everyone, but she would look at them long as if she was saying goodbye for the last time. When it came to my turn, she looked at me deep in the eyes and said, my child, never accept to get married for a price “That was the last I saw of her”.

**By: Christine Mary Irabu (RIP)**  
*<sup>D/o</sup> Anuku*

## **INTRODUCTION:**

### **1.0 What is Bride Price: -**

Payment of bride price is a traditional practice, found in many African societies. It commits a groom price in form of money or gifts to the parents of the bride for hand in marriage. Sam Valun - Bride Price in Papua New Guinea P.1. In ancient Egypt, it was similar to a modern engagement ring, but the price went to the girls father.

The initiation specifies that the prospective husband, usually with the help of relatives, must provide substantial amount of money or goods, to the girl's family, before the marriage is contracted. The amount of money and size of the gifts vary from society to society. Among the Baganda, it involves small amounts of money, cloth gifts for the mother and aunties, Kanzus for the father and brothers and food items. In Teso region, it involves cows, goats, a sheep and money.

The items involved are often determined by the man's family background, his position in society, the age of the girl, her education and her status. For example, if the man is wealthy, he may be asked to pay more. If the girl is young and educated, the parents would state those attributes when determining the price. If the girl had a child outside marriage or had been married before, this too would determine the amount asked. If a girl had been married before and divorced this would be seen as a risk factor and her parents would not ask for much for fear that the second marriage may also fail and then they would have to refund the bride price.

Among the African societies, bride price is seen as a symbol of the marriage contract. It is also seen as an arrangement for distribution of family property and an arrangement of alliances. A woman whose bride price was used by her brother to marry was closer to the woman married by “her” bride price. The bride price also legitimises children and made them their fathers. Indeed in Teso culture, if a woman had a child before marriage, that was an illegitimate child. Even if the parents married, the husband had to pay an extra cow to take the child.

In some communities, it is seen as compensation to the girl’s family for the trouble taken to raise their daughter and the loss of her economic value i.e. work and adding to the family. Some societies viewed it as a social exchange that brings families together. Among the Southern Africa, a man holds a special relationship to his “cattle linked sister”, whose marriage payment he receives. Bride price is also seen as a factor that contributes to stability in marriages since it is often repaid if the marriage is dissolved, a woman’s family has all interest in resolving any problems between their daughter and husband to ensure stability in the union. Similarly the husband’s relatives because they have contributed to the dowry, have to resolve any differences. If there is a divorce, the relatives can dictate on whether the woman will leave or not. They will be quick to protect her, especially if she has children. For the women, bride price is viewed as a status symbol. It is common to hear women at a water collection point, trying to impress their friends about the amount of bride price paid for them. They often have no kind words on those whose husbands paid a lesser amount or non-at all. Finally it offers social protection to the women on divorce or the death of her husband. On the death of her husband she will be given to someone to look after her and the children. On the other hand, in some societies, like the Igbo, it is like security so that if a woman is barren or leaves the marriage before producing children, it can be demanded.

## **2.0 BRIDE PRICE AND HUMAN RIGHTS**

Bride price is seen as supporting the institution of polygamy because older men who have accumulated wealth can be able to pay it. Since one party pays the price for the other, it removes the element of equality, which is essential in a marriage relationship.

The first European observers of bride price concluded that it constituted an actual wife purchase, similar to buying a slave. Indeed in Uganda, in the classic case of Amkeyo, the judge in dismissing a petition for divorce, brought on the basis of cruelty concluded that a customary marriage was no marriage at all, but was something akin to wife purchase.

Bride price affects a woman and acts to diminish their autonomy and sense of self worth. The payment is sometimes used to control a partners actions, rights for example to movement, to decide on the number and spacing of the children, acquisition and management of property, her rights on divorce, over custody of her children and her independence. At the death of her husband, she may be forced to take on another man to inherit her, because the husbands family invested in her through payment of bride price. In Teso, high rates of child marriages and early pregnancies, leading to a high school drop out rate among girls has been reported to be linked to the culture of bride price. Many parents, because of poverty push their under age daughters into marriage. During a visit to one internally displaced camp in Katakwi in 2001, one lady confessed that families with girl children are better able to cope because they can exchange them for food. A girl can be exchanged for a sack of cassava. These early marriages plays a part of denying girls an opportunity to continue with their education, is also a major factor in the high maternal mortality rates which is prevalent among the young girls and has remained constant over the years.

Bride pride has close linkages to poverty. Young men and their families have to work hard to accumulate the wealth necessary to pay pride price. One young man is reported to have requested for an early retirement so that he could use his package to pay Bride pride. The girls parents have suffered equally when it comes to payment of bride price. Many have had to lose their homes, and land to repay dowry or even end up in prison as this is treated as a civil debt. Some young men and women resort to cohabitation or elopement to avoid paying bride price. While in old days it provided some social protection to the women. Women have not become vulnerable in face of relatives who want to take



away their husband's property and leave them with no support. Many have also been exposed to deadly diseases like HIV/AIDS because of the practices related to community participation in contributing to bride price, like wife sharing.

### **3.0 BRIDE PRICE AND VIOLENCE AGAINST WOMEN:**

Violence against women involves infliction of bodily injury, verbal threats, harassment and emotional abuse or the destruction of property. It is often used as a means of coercion, control, revenge or punishment on a person with whom the abuser is involved in an intimate relationship or not.

Bride price alone may not be bad, but it may create situations that lead to denial of rights. For example, the mere fact that a husband has paid a price for a woman puts this woman into the category of chattel – something that has been bought. The element of equality between a man and a woman is regarded. This inevitability leads to discrimination because the two cannot be treated in the same way. It therefore affects a woman's dignity and self worth.

Bride price is one of the causes of violence in homes. As a result when the issue of custody of children arises, for example, the husband is favoured because he has paid the bride price, which entitled him to the children of the woman for whom he has paid for. Bride price also makes the woman vulnerable to abuse. For example, because a man has paid bride price, he assumes that he has a right to chastise a woman and society will protect him in that respect, and so will the religious communities. A study of domestic violence in Uganda in 2002 showed that bride price is one of the causes of violence in homes.

Bride price can also limit their rights to choices that women make in terms of the number and spacing of children, custody and maintenance of the children. This is because a woman is married to perpetuate the clan. A woman cannot make decisions on the number of children alone. In terms of property matters, it also affects their ability to decide freely on issues of acquisition and disposal of property. Threats of recovering the bride price can be used to control a woman's actions. In the end, they can be intimidated to stay in an abusive relationship because if she leaves, her relatives will either have to repay, lose their own property or liberty.

Akurut, a young woman from Kumi stayed for many years in an abusive relationship. In spite of several pleas to her relatives, to return the bride price, none of them acted because the brother has used it or to many a wife for himself. Akurut disappeared from home for 5 years and went to Malaba to trade in local beer "malwa". She earned enough money to buy 5 cows and then called her husband to the sub-county headquarters in Kachumbala to collect his bride price which she bought herself.

**Margaret Oguli Oumo**  
**2002**

The state itself has been a party to the continued practice of bride price. It has come in to implement court decisions for recovery of bride price. This sends a message to the community that demanding bride price is permitted and justified.

### **4.0 THE LEGAL FRAMEWORK:**

Uganda is party to International/regional conventions, charters and Declarations, which provide a legal framework through which to address the issue of bride price. As seen in the previous section, bride price has implications on human rights issues like equality non-discrimination, freedom from cruel, inhuman and degrading treatment. These are basic principles of human rights, which is enshrined in the Universal Declaration of Human Rights, the International Convention Civil and Political Rights, the

International Convention on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

In 1995, Uganda together with other UN nations endorsed the Beijing platform of action and Beijing Declaration. The government pledged to join other states to take urgent action and eliminate violence against women, which is a human rights violation, resulting from harmful traditional or customary practices, cultural prejudices and exterminate it<sup>9</sup>. Payment of bride price has a linkage to human rights. It should therefore be condemned.

In 2000, Uganda took Violence Against Women as one of the priority area in its National Action Plan on Women as one of the priority area in its National Action Plan on women. The constitution of Uganda has enshrined the principles of equality, non-discrimination, and freedom from cruel inhuman and degrading treatment as some of the fundamental rights to be protected in our constitution. Customs and practices, which affect the welfare and dignity of women, are forbidden.<sup>10</sup>

Consequently, bride price, a practice that relegates women to the status of a chattel violates the principles of equality and non-discrimination. Moreover, this practice renders women vulnerable to abuse and intimidation. Bride price should be condemned as contrary to basic human rights. The state has an obligation to protect women from customs which affect women's ability to make choices and which can be used to intimidate and convince them to remain in an abusive relationship.

#### **5.0 LOCAL INITIATIVES TO ADDRESS BRIDE PRICE**

While there is a legal framework through which the issue of bride price can be addressed, the practice is still rampant in Ugandan communities. In the 1950's the colonial administrations passed regulations to limit the amounts. However, this resulted in the practice going underground. The Customary Marriages Regulation Decree, sec. 6 makes it optional to pay it and does not make it prerequisite for the conclusion of a valid customary marriage. There is now a proposal to rename it "marriage gift". These are not refundable, if a marriage breaks down. There are cases where some parents have opted not to demand it in some instances. Some have done it because they either do not want to demand it of their daughters, but these are exceptions. Mifumi Project in 2001 carried out a referendum in Tororo on bride price and over 50% voted against it. Nevertheless, the practice still continues.

Much as the practice violates basic human rights, the practice has been going on for since time immemorial and is seen as a way of life. Many still defend it as an affront on their culture and designed by elite women to interfere with their customs. But, culture cannot be used to justify violations against the human rights on women, this custom can no longer be justified and must be modified.

#### **6.0 CHALLENGES:**

As stated earlier, the demand for a refund of bride price is embedded into people's social lives. It is, a culture that is defended by both the men and the women. The women themselves see it as a symbol of their worth. The communities see bride price as a social practice that gives them identity; it will therefore be difficult to eliminate it. Secondly, if it is removed, there has to be a practical method of contracting valid marriages, which are recognised. My experience in working with communities is that where local people are required to register their marriages, most offices do not have certificates. If they pay for certificates the money goes for registration and not to the parents of the girl. On the other hand we need to put into place alternatives that can be implemented in the communities. Legislating against bride price may not work because it may be difficult to implement. The practice will only go underground. In addition to this, you leave the parents who have invested in their daughters to go and produce in another clan without compensation. Finally it is a long practised custom and cannot be abolished overnight.

## **7.0 RECOMMENDATION:**

The unacceptable part of bride price is the practice of demanding it back when a marriage breaks down. Therefore, given the above challenges, the following can be done to address the problem:-

1. Legal Rights awareness should be created among the communities to educate them about the rights of women affected by the practice.
2. Legislation should be enacted to allow for exchange of gifts but discourage demanding for its refund/
3. The state should not enforce decisions to refund bride price to send a message to the people that neither is it justified nor permitted.
4. The state should provide options for the people to contract legal unions by ensuring that registration can be done at the nearest point.
5. Research should be carried out on the relationship between bride price and human rights and any negative aspect should be documented and prohibited.

## **8.0 CONCLUSION:**

Cultural practices that effect women's ability to realize their rights should be condemned. People should be made aware of the linkages between the cultural practices and violation of rights. The positive aspects can be maintained but the negative aspects like refund should be condemned and prohibited.

**NAME: WAMBUI OTIENO MBUGUA**

**ORGANIZATION: FRIENDS OF WIDOWS AND THE DISADVANTAGED PEOPLE INITIATIVES  
(K)-"FOWAD" (In short)**

**LIFE HISTORY AND DISADVANTAGE OF SOME CULTURES (ESPECIALLY TO WOMEN)**

**AUTHOR OF "MAU MAU'S DAUGHTER - A LIFE HISTORY"**

WAMBUI OTIENO MBUGUA was born on 21st June 1936. A great grand-daughter of the first freedom fighter in Kenya, Waiyaki wa Hinga, who was buried alive by British colonialists on 6th September 1892.

I have written the above book from my memory, which my editor called in her introduction of the book "Memory is a weapon".

Don Mattera had written in few words as follows: Memory is a weapon. I knew deep down inside me, in that place where laws and guns cannot reach nor jack boots trample, that there has been no defeat. In another day, another time, we would emerge to reclaim our dignity and our land.

I remember with bitterness what happened to me during the Mau Mau fight - jail, restriction and detention.

I was born and educated in a missionary school and churches. I got baptized in Church of Scotland Mission. The land in which these schools are erected were given out by my grand-father, Munyua Waiyaki, nevertheless this generosity was not recognized by the British colonialists who continued harassing my family. I abandoned my baptism names because there was discrimination and hatred in the church. The white people had selected a separate place in the church where no African would be allowed to sit. African church ministers were not allowed to sit there either. Therefore there was no point using their names. African people started feeling those as unfriendly people who only used us as slaves. In 1946, Africans came out with an idea of building schools that they called independent churches and schools. The founders and these members of these places were nicknamed Karing'a.

I got involved in Mau Mau movement in early fifties at the age of 17, after the most exciting thing I did was to attend a political meeting at the age of 14, where Africans were demanding to be allowed to plant coffee. After taking a number of oaths, I was elected as the leader of scouting movement basically known as espionage. I was also a member of the youth group, youth choir women's wing and several other groups. I also joined the fight against segregation as African people would not enter European schools, hospitals, hotels etc. I also led the group that fought and held several strikes against the colonialists who would not allow the wives of jailed, restricted or detained husbands to visit them. This was my idea and the wives were allowed visit. I also had to steal letters from government offices and government houses. I know that few of you would understand what was expected of me as a scout.

My main job was to find out how a police station or home guard post could be attacked. The first thing to do was to enrol the African police officers as members of our organization. The information that was very vital to be relayed to us was how the police station was situated. Where was the armoury, where to converge while on the way to attack the station, get guns from the armoury and other fighting weapons, how many white police officers would be sober from 10.00pm to 12 midnight, which direction to run to and the safe place to converge. A mistake that would cause the freedom fighter to be caught would cost you your life.

It was not easy to keep the morale high. Many things could and did go wrong at the eleventh hour. I would ask myself whether there was any point in going on, since it was easy to be betrayed. I would take a course of action only to be sabotaged by a traitor. I would seriously wonder why we should fight for freedom for the same people who were busy betraying the cause. The betrayals lent support to the colonialists. It would raise their morale to say that Africans are not yet ready to rule themselves.

When we felt like we were defeated, hungry, depressed or had lost hope, we were encouraged by singing Mau Mau nationalist songs. The songs were very inspiring and boosted our morale, especially while under very trying circumstances.

The other thing that raised our morale was from our enemies themselves. Those sent from England were young soldiers, obviously such would not resist women. We organized some groups of women of very low morals. They would drink with them and eventually get guns and other weapons. Knowing that they could also be betrayed intensified our fight.

When I was restricted at Kikuyu near my home, the District Officer would ask me several questions. I got fed up, I gave him one slap and he fell down. He then made a decision to direct me to report to Waithaka Chiefs Camp. The distance from my house and back to Waithaka is 14 miles. I had to make the journey between 8.00 and 10.00am. This did not bother me.

I was detained with three of my children at Lamu island in Coast Province. I was raped by a white officer. I did not know his name. I had been in Lamu for three days. Later on after 3<sup>1/2</sup> months, the same officer-in-charge of Nairobi detainees returned to Lamu. All detainees had no names. They were given numbers, mine was no. 59. When my time came to be interviewed, he persuaded me to sign that I shall never take Mau Mau oath. I answered him that I had not taken any but even if I had done so, I would not surrender.

By sheer luck I was released due to illness. At the same time another African officer met me while I was going to buy milk for my children. He greeted me very warmly. By the way he looked, I could see that he was approachable. He asked how the life was in detention. I decided at once that this was the only time I would be told the name of the officer who had raped me. I therefore told him that the officer whose face looked like he had smallpox had been sending us biscuits, tinned beef etc. "You mean the huge officer who wore shorts?" I answered to the affirmative and he told me that his name was Chief Inspector Rudolf Speed. While back in Nairobi, Jomo Kenyatta was released and held a post of Minister for Constitutional Affairs. I reported to him what had happened and showed him a baby girl I had given birth to. He took up the case with the government, which was then occupied by several white ministers and officers. An African lawyer reported to the then Registrar General and the Commissioner of Police. It was on that very day that the officer was paid his dues and a ticket to England.

Jomo Kenyatta tried to get him arrested by sending two African officers who worked with Mr. Speed in Special Branch office but to no avail. I never saw the officer again until December, year 2002 in Pretoria, South Africa. He recognized me and I had recognized him long before he saw me but I was tongue-tied.

In 1961, I reluctantly married my late husband, an advocate of the High Court of Kenya. He died of heart failure. He was a wonderful man.

I have visited several countries abroad especially the United States and have met very many women including first ladies. All the time I talked mostly about culture in Africa and the maltreatment during the colonial times. I did not forget to mention the evils done by several African countries like misuse of funds in our exchequers, World Bank, International Monetary Fund and money from several donors. It became horrible corruption, which was scaring.

I joined the second, liberation for Kenya. I was the only woman when we registered Forum for the Restoration of Democracy (FORD). One day we went to open an office in Kajiado in Rift Valley Province. We were beaten by people incited and paid by the Member of Parliament in conjunction with the District Officer.

The D.O. was transferred later to Central Province in Kiambu District. He is now a District Commissioner. I was left for the dead. I therefore suffer when walking plus I have a heart disease as a result of all the beating I received. People around our area thought I was dead. You may have a look at these pictures taken soon after the beating in February 1992.

In 1986, my husband died of a heart problem. I prepared to bury him where he had chosen to be buried. This I did not do without informing the relatives especially his younger brother. He had also told his brother about where he liked to be buried. This issue became a big court case until it got another name, "S.M. Otieno saga" following his name. They would argue that if they did not bury him at his father's home, ghosts and demons would affect them. They even brought witchcraft in form of birds and hid them inside my fence. When they were seen I carried them and burnt them in the name of Jesus. They also said that if their son were buried elsewhere his children would die. I said that was fine.

Others argued that the children would lose identity. I told them that identity of a person in any country is gauged by the way one carried himself. He is no longer solely tied to the locality of his/her clan's land. The concept of identity in a modern society is shaped by the way you carry yourself, for your acquired knowledge, the way you establish yourself and your general behaviour. Children's identity can never come exclusively from a clan, and in this case a clan that is totally unknown to them.

The case ended on 15th May 1987 and I have not seen Otieno's brother to date. We surely don't have anything in common.

Imagine a man who made me embalm my husband's body 3 times in six months. He also made me visit a dead body twice a week to check whether anything had gone wrong.

Luckily my husband had ordered me not to attend his funeral and also his children. After the end of the case, my children left for America and Germany where they were studying. The case became more difficult because the Government, especially the President got involved.

My husband had told me not to attend his funeral if it is taken to Nyanza Province in South West of Kenya and he warned me if I tried he shall wake up, leave his coffin and beat me up together with those who will be accompanying me and then get back to his coffin and die for dying I must die. "Leave them I shall deal with them". Our friend who came to visit us asked him "SM" how shall you deal with them and you shall be dead. He answered her that if he cannot do it, God will do it for him. Surprisingly those judges who got involved together with his relatives are dead. Only his brother and his wife are living. The brother lost three daughters in one year and also lost another brother thereafter.

This case is very large. The best thing to do is to buy the book I have written on the issue, published in the USA in 1998 by Lynne Rienner Publishers Inc., 1800 30 Street, Boulder, Colorado 80301, and in United Kingdom, Lynne Rienner Publishers Inc., 3 Henrietta Street, Convent Gardens, London WC2E 8LU, Bibliographical References and Index ISBN 1, 55587-722-2 (paper back).

Wife inheritance after the death of a spouse only promotes prostitution. Today, the old men who are experts in choosing husbands, if they see that you are not agreeing with the first chosen husband, they sit down to select another one. If that is not prostitution then I do not know the meaning of the word. Women are in such big problems like poverty, homelessness and education. The most disgusting thing of this culture is that women spread it. Women start being taught by their mothers about the culture. They are given useless excuses that if they do not do this or that their children will die. These mothers have been taught for generations about how beautiful the custom is. Most of these young women and girls are forced into these cultures.

## **BRIDE PRICE**

I am proud to tell you that I was the first woman to reject this system of marriage popularly known as African marriage. I specifically told my father that he had several goats, cows, etc. to sell. As for me, I said, I am your daughter and cannot be bought but when you have a problem invite me to help like you would with your sons. When I informed my mother that I was going to get married again, she did not indulge into that discussion because she knew the answer.

Female Genital Mutilation is another outmoded culture. I thank my parents and the missionaries for getting me out of this. I do not know what it is all about.

From 1946 women under United Nations have been fighting about all the ills done to them. Let no man think that the fight is dying soon. On the contrary, it is extending. We have achieved a lot through the struggle, therefore young women do not let us down, let us fight to the bitter end.

Due to my experience as a widow during which time I have brought up several foster children without any external support, I felt the need to establish an organization that would address the problems and concerns facing the disadvantaged people. In particular, widows, orphans and the girl child are often mistreated and ignored by society, including their own families who regard them as liabilities.

For this reason, I decided to form an organization called FRIENDS OF WIDOWS AND DISADVANTAGED PEOPLE INITIATIVES (K) - (FOWAD). Through FOWAD, I intend to work with widows, orphans and other disadvantaged persons to educate them on their rights, encourage them and generally sensitize the society about the needs of such people.

After the death and the nasty burial of my husband, I lived alone for eighteen years. Widows, from my investigation, die of depression and loneliness. They are abandoned by their friends who were very good friends. Presumably, I found out that the wives of former friends think and believe that these widows are a threat, dangerous and could take their husbands. They also think that the widows will depend on them financially. Widows are made to get hatred and make decisions on how to live with their families who totally abandon them. In some tribes their properties are taken and others are forced to be inherited by their brothers-in-law. Since I'll come to this later when dealing with culture, I would want to say how I was sick and abandoned but God gave me a husband after several prayers. On 18th July 2003, I legally married a Kikuyu like me but who is much younger than me. The same time an old man, ten years older than me, married a young girl in the church. In the second case nobody made noise but in my marriage there was a lot of hullabaloo. These stereotype lives of women are demoralizing and are intended at making women look inferior. My new husband, Mr. Peter Mbugua, is a nice, polite and kind person. I do not feel depressed like before and I do not hate people.

It is a subject that is spoken everywhere. It is important for us to assist each other especially in order to fight the outmoded culture that deters us from development. Even though developed people of the world have given us their love and understanding, they also have several issues to deal with in their own countries. We tend to forget whatever we receive from them, they sacrifice their people who pay tax. They also deprive themselves of their full daily bread in order to share with us.

We waste a lot of our resources dealing with issues in the name of culture. Gender violence, misuse of funds, which we would use on education. It also deprives us of the opportunity and funds to teach our less educated sisters how to deal with income generation so that we become liable for ourselves. Women in Africa are treated like dogs who can have a man chosen to sleep with them in order that they may feed, clothe the widow etc. We could achieve this ourselves after all it is the women of Africa who deal with all stereotype jobs. When we go to sell things which are hand-made or food that we plant in our gardens, we hand over everything to the so-called husbands to show them how hard working we are in order to avoid violence and to get simple shelter. This is the worst corruption in our homes before these men extend stealing and corruption to the IMF and World Bank (WB). We have stolen from all donors targeting our dignity and self-respect.

With the support of such groups as Mifumi, GTZ and other stakeholders in development programmes, I believe FOWAD will make a difference in changing society's attitude towards widows, orphans and the girl child.

As I said before, my book has all this information but it is difficult for me to tell it all in a conference. Reading is knowledge. Thank you for giving me a chance to express about my life and also to be with you. I hope you will pray for me to get well after the beatings during Mau Mau and the fight of the second liberation.

**Thank you and may God Bless You all.**

# **INTERNATIONAL CONFERENCE ON BRIDE PRICE AND DEVELOPMENT MAKERERE UNIVERSITY, KAMPALA, UGANDA FEBRUARY 16<sup>TH</sup> – 18<sup>TH</sup>**

## **BRIDE PRICE AND GENDER VIOLENCE FEMALE GENITAL MUTILATION IN UGANDA**

**By Jane Frances Kuka**

**Former Minister of State Of State, Disaster Preparedness & Refuges, Office of the Prime  
Ministries and Women MP, Kapchorwa –Uganda 1996 to 2002**

### **Definition of Gender Violence**

According to the declaration on elimination of violence against women, gender violence is the physical, sexual or psychological harm or suffering of women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life.

In Africa, the list for the various forms of gender- based violence is not exhaustive. The international community, governments and development actors including activists have recognised a few of these including female genital mutilation.

However, it should be noted that in most FGM practicing communities, FGM and bride price go side by side and are both interchangeable and reinforcing. Bride price in itself is another form of gender based violence and discrimination.

### **FGM**

Female Genital Mutilation also called female genital Cutting (FGC) or female circumcision in some communities is a traditional practice, which involves the cutting off, or alteration of the female external genitalia for social culture reasons rather than medical reasons. The practice is regarded as a sacred ritual sanctioned by ancestors, protected by cultural beliefs and used to initiate girls into perceived womanhood among some communities who mutilate at adolescent age. The practice is performed in 28 countries in Africa with some countries like Egypt, Sudan and Eritrea having over 90% prevalence.

In Uganda, FGM is practiced by the Sabiny tribe of Kapchorwa and the Pokots of Nakapiripirit District. The practice has also been reported among migrant Kalengins, Somalis and Nubian communities scattered in many districts namely Busia, Tororo, Soroti, Luwero and Masindi.

Among the Sabiny and Pokots, the practice is done every even year in the month of December and involves cutting the clitoris and labia minora of women/ girls who fall within 15-30 + years of age. But the modal age group is 18-24 years. The practices are used as rites of passage from childhood into womanhood.

The practise is associated with several health, economic and psycho-social problems that impact negatively on the lives of adolescents. Apart from dropping out of school early and marrying soon after the circumcision ritual, females who undergo genital cutting are predisposed to a number of health risks ranging from severe bleeding and pain, infections including HIV/AIDS, lameness, painful and unpleasant sexual intercourse, shock resulting in some cases into death, obstructed labour and its related problems to low sexual desire and pleasure (Metcalf, 1996, Kakuba & Kanesathan 1995). For those who have undertaken the knife but scream during the operation, they are regarded them as cowards and are socially harassed, discriminated and denied any responsible role in society. It brings embarrassment to the whole family. The women who resist FGC are taken as deviants to the culture. These are major violations of human rights of women.



## **Bride Price**

Bride price among the circumcising communities, particularly the Sabiny and Pokots is a strong element of their traditions. The practice is almost universal to everybody whether educated or not, rich or poor. Among the Sabiny, it ranges from five to twelve heads of cattle and goats, hens and other accompanying items like clothes, utensils and money. For the Pokots, it can go up to 60 heads of cattle depending on the wealth of the groom's family. In either community, even the poor are forced to pay at least something for their wives. Bride Price is a means of owing the wife married and for the wife, an assurance of the marriage. On termination of the marriage, there is refund of the bride price paid less the number of children produced to that husband. To some families especially poor ones, parents coerce their children to marry for the sake of bride price. Cases arise where children are married off at the age of 13 years for bride price. In a number of cases, girls are forced by their parents and brothers because of failure to pay bride price and thereafter married off to another husband who can pay no matter the age difference between the bride and groom.

## **FGM and Bride Price**

Among the Sabiny and Pokots, FGM is used as a means of graduating a girl from childhood into woman hood. Immediately after circumcision, the girl is married off no matter the age. Circumcised girls/women who stay at home for an additional one or two more circumcision seasons without getting married find it difficult to get a husband as men rush in for the new younger girls who have graduated after circumcision. Girls are hardly allowed to get married before undertaking FGM within the Pokot community.

It is based on the above premise that parents who want bride price will coerce their daughters into FGM so as to get married off easily. The bride price is withheld until the wife undertakes FGM. So women who are married before getting circumcised are forced to go back to their parents for circumcision.

The parents of the bride will hold her at ransom on coming for circumcision until the husband pays bride price.

Circumcised girl attracts bride price.

## **INTERVENTIONS**

Initiation of interventions and how it backfired – 1991. This was because I Mrs. Kuka and Dr. Elizabeth Madra had attended a conference in Addis Ababa on harmful practices and then had started sensitisation seminars on FGM when the Sabiny Elders felt that it was disrespect for their culture and values.

It was in view of these health and human rights considerations that Uganda Government, development partners and women activists have initiated culturally sensitive to address the practise. Intervention programmes like REACH and FPAU, GOD Parents Association-Uganda have initiated some efforts which has resulted in changing the practice from being a taboo even to talk about it to now being a public domain in these districts.

More community focused interventions starting 1996 using advocacy with Sabiny Elders, NGOs, President of the Republic of Uganda who is Patron of FGM and I Mrs. Kuka as National Coordinator/Vice Patron for Community that Cares Uganda. These interventions were aimed at eradicating this cultural practice that had become harmful and was really stigmatising to the victims.

## **LIMITATIONS**

The campaign against FGC/M has been hindered by various limitations, which include among others:

- Poor networking and collaboration among the implementing partners.
- Limited knowledge on existing skills, experience and successful stories, which can be replicated to help in the campaign to eradicate FGM
- Inadequate financial resources committed to FGM activities.
- Inadequate financial resource data on FGM and lack of operational data including management information system -to operational research data on FGM.

Weak institutional and human capacities to properly design, implement, monitor and evaluate FGM intervention – capacity building & educating trainers in the fight to ensure FGM becomes voluntary.

It is however crucial to note that the above interventions have led limitations in taking impact to its full expectation. This is due to the approaches used, which didn't maximise the communities role in shaping their own destiny. Communities have to be helped to understand the magnitude of their own solutions. FGM has several effects which impact directly on the lives of the families and communities circumcising. An approach that helps them to realise this properly and tasking them to come up with solutions would definitely work in addressing FGM.

Community That Care-Uganda (COTHACU) is a grassroots based NGO that has her membership and volunteers established at the local villages. Its decisions are made at lower levels and built upwards. The FGM project of COTHACU will benefit from this established network. COTHACU by nature of its establishment operates on the philosophy of supporting communities to appreciate the problem of FGM in their community and allowing them to come up with locally based interventions which are sustainable and well understood by them. External interventions will be used only in the initial stages.

### **WAY FORWARD**

- Educate the Girls Child and develop income-generating activities for the disadvantaged groups and support for those who have said no to FGM.
- Further finding for those Girls already at school, as they are key to the campaign against FGM.
- Set up Technical Institutions to train both girls and boys in life skills activities
- Create social services to cater for community needs.

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

**Mrs. Margaret Sekaggya, Chairperson,**  
**Uganda Human Rights Commission - 18<sup>th</sup> February 2004**

**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.

# ***Sadaaq or Mahr: Interrogating Hetero-reality in Muslim Marriage from Islamic and Human Rights Perspectives***

**Presented at the 1st International Conference on Bride Price and Development  
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***By : Hameed Agberemi***

Research Director, Centre for the Social Study of Islam in Nigeria (CESSIN);  
2003/2004 Visiting Research Fellow, Islam and Human Rights Program,  
Emory University Law School, Atlanta, USA.

P O Box 9738 UIPO, Ibadan, Nigeria  
[hameed.agberemi@cessin.org](mailto:hameed.agberemi@cessin.org)  
+234.802.3095016

***Sadaaq or Mahr: Interrogating Hetero-reality in Muslim Marriage from Islamic and Human Rights Perspectives - Hameed Agberemi***<sup>4</sup>

## **Abstract**

Hetero-reality - the ideology that women exist *for* men - lies at the root of most forms of injustice, physical suffering, psychological misery and social violence inflicted on women everywhere. Male dominance itself - patriarchy - operates through structures and socialisation processes such as women's marginalisation in the creation of knowledge and ideas; their susceptibility to helplessness as economic dependants; their status as human subjects with limited agency and autonomy; and especially in private, their vulnerability as human persons whose bodily integrity is always at stake. Institutions such as the family, 'culture' and politics are often deployed in the service of patriarchy. Yet, it is hetero-reality (which men *and* women uphold to varying degrees in their social worlds as a functional ideology) that lies at the core of patriarchy and that continues to foreclose all possibilities of full substantive justice for women. Hetero-reality very often procures its legitimacy and its preservation from the religions.

The Qur'an, the primary source of Islamic beliefs, values and laws, speaks of *sadaaq*: a marriage-gift of no minimum or maximum value; agreed between bride and groom alone; given not to the bride's family or relatives, but directly by groom to bride, and for keeps - as a symbol of *truthfulness and sincerity*, and friendship - and promise. However, Muslims almost everywhere continue to give and receive varying forms of pre-Islamic *mahr*, a practice that historically symbolized *ownership* (and very often still does today). Even though not mentioned anywhere in the Qur'an, *mahr* is the dominant term in Muslim language and is the tradition found in place of *sadaaq* almost everywhere amongst Muslims, and is one important ideological pillar upon which the subjugation of the Muslim wife is often anchored, whenever it does occur.

Beyond the now trite argument that all would be well "*if only Muslims would truly follow Islam*" instead of their various patriarchal cultural traditions; this paper further explores the social and historical processes surrounding the rise of the authoritarian in Islamic discourses, and the gradual loss of the dynamism that once underlined the epistemology and methodology of inquiry in Islamic jurisprudence: that complex system which

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<sup>4</sup> Research Director, Centre for the Social Study of Islam in Nigeria (CESSIN); 2003-4 Visiting Research Scholar, Islam and Human Rights Program, Emory University Law School, Atlanta, USA. Tel: +234.802.3095016. Email: [hameed.agberemi@cessin.org](mailto:hameed.agberemi@cessin.org) Postal: P.O. Box 9738 UIPO, Ibadan, Nigeria. I thank my wife, Jaleelah Olaniyan for reading through several drafts, for giving valuable critical insights and for offering very many useful suggestions.



especially more so in the past, functioned for Muslims as the arena in which the conditions, dynamics, and the meanings of the relationship between God and human beings were explored.

I explore historic *mahr* as a construct founded on hetero-reality which does not merely distort and injure women as a class; but actually maintains their status as *owned* persons through a variety of methods: through social institutions and structures, through ideology, through coercion and violence, through the control of resources and rewards, through the politics of (sexual) intimacy, and through personal power. The paper discusses the emergence of *sadaaq* upon the advent of Islam, as well as the *anti*-hetero-reality narratives in the Qur'an from which *sadaaq* emerged. I investigate the far-reaching transformation in gender-relations that was intended with that emergence. Explanations are advanced for why this has so thoroughly failed in Muslim practice, and especially more so in the contemporary. The paper discusses the processes that have made the huge differences between *mahr* and *sadaaq* to become only a subtext in theory, hardly visible in practice. In explaining how *sadaaq* and *mahr* came to be used as synonyms, linguistically as well as practically, I show how knowledge systems, and especially *language*, are structures within which notions of masculinity and femininity are constructed to support hetero-reality as an established social order of power and privilege.

This paper shows that even though subtle on the surface, the differences between *sadaaq* (marriage gift) and *mahr* (bride-price) have such far-reaching ideological, economic, psychological and even spiritual implications for Muslim women (*and men!*) that all cultural traditions that obfuscate such differences ought to be denounced and revealed to be totally at odds with the Divine Will expressed in the prime sacred text. The continued lack of interest by mainstream Islamic jurisprudence in delineating such differences ought to be seen as complicit in the subversion of the justice that the Qur'an so unconditionally demands in all interactions, including gender relationships.

A counter-narrative to hetero-reality based on an alternative way of thinking within the Islamic framework is advocated that upholds the marriage gift while rejecting all harmful practices - including 'bride-sale', dowry and bride-price - all of which run counter to women's human rights, as well as the text and intent of the Qur'an, but are today carried out in the name of Islam.

### **Keywords and phrases**

**Islam; Sadaaq; Mahr; Nikaah; Bride-Price; Dowry; Hetero-reality; Muslim Marriage; Human Rights**

## **INTRODUCTION**

While patriarchy - the historic system of male power, privilege and dominance over women - has been extensively theorised in the past several decades (especially by feminist scholars); it was only much more recently that Raymond (1986) coined the term hetero-reality to denote the functional ideology founded on the central belief that in our world, *women are made for men, belong to men, or exist for men* <sup>5</sup>.

Patriarchy is known to operate through structures and socialization processes such as women's marginalisation in the creation of knowledge and ideas; their susceptibility to helplessness as economic dependants; their status as human subjects with limited agency and autonomy; and especially in private, their vulnerability as human persons whose bodily integrity is always at stake. Institutions such as the family, 'culture' and politics are often deployed in the service of patriarchy.

The effects of patriarchy are seen in the status of women everywhere: two-thirds of all illiterates are women; women with their children make 90% of all refugee populations (either fleeing war or environmental tragedy); women account for 80% of all poverty populations; the scourge of HIV/AIDS now affects more human females than males; women own 1% of world property and earn only a tenth of global income even though representing

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<sup>5</sup> As a Muslim, as a male and as an African, I am able to recognise hetero-reality (the ideology that *women are made for, belong to or exist for men*) as an ideology that reinforces, and yet exists separately alongside the ideology of patriarchy (*the historic system of male power, privilege and dominance over women*). Even though Janice Raymond first used the term hetero-reality within the context of a radical feminist narrative, I here appropriate the term for use because I do not currently have an alternative English term to denote the functional ideology that Raymond named hetero-reality. I am no feminist (even if at all males can ever be). But I do recognise patriarchy as an extremely negative ideology that repudiates my consciousness both as a human person and as a Muslim.

a third of the *formal* labour force of the world. Yet women are the bread-winners for one-third of all human families. Outside the formal labour force, women's efforts – as housewives, home-makers, farm workers, nuns or domestic servants – is often considered only 'natural', marginal, 'unskilled' or transient, and is invisible in GDP calculations for almost all countries. The reproduction of the human species and the nurturing of its young are not regarded as 'productive activity' in any economic analysis. All the ills that affect human beings – from poverty to ill-health to war – impact first and worst on women, who are the last to be consulted, if ever, about solutions to those problems. While men control agriculture everywhere, 80% of African farm-workers are women. Being the water fetchers, firewood gatherers and the fodder collectors of the world, women suffer most from environmental degradation. Violence against women is global: endemic in every country, every culture, and every economic class. Wife-battery continues on a colossal scale everywhere, from the "more advanced" societies of the North to the less privileged societies of the South. Rape, sexual molestation, harassment and abuse are widespread everywhere. The forced 'suicide' by burning (*sati*) of an otherwise property-inheriting widow on her husband's funeral pyre is still prevalent in India, even though outlawed. Female infanticide, even though illegal, remains widespread in China. Bride sale and child marriage goes on, not only in Africa, but also in many other places. Millions of Asian and other women still pay dowry at marriage and dowry deaths and wife-burnings are rampant. 'Honour killing' by their own family-members of (especially Muslim) women and girls suspected of illicit sexual intercourse still goes on in Asia – often in the name of Islam. Less than half of all women are able to procure trained medical help during pregnancy and child-birth. Pesticides and other chemicals, toxic wastes, nuclear fall-outs and other environmental disasters make women's reproductive organs the first targets through cancers; when not causing stillborns or deformities in infants – as seen in the Pacific Islands where nuclear testing causes the birth of 'jelly-fish babies': infants born without spines.

**Were it not for hetero-reality and patriarchy, *every human being* would be equally concerned about the issues that are called 'women's issues', since these are issues so central to *life* on the planet – and for believers, issues of weight in the hereafter.**

**Patriarchy is liable as the system responsible for much of the injustice, physical suffering, psychological misery and social violence inflicted upon women as a people. Even though socialized to be largely unaware of it, men too are victims, not just of the corrupting effects of male power, privilege and dominance over women, but also of countless other consequences of patriarchy which although impacting first and worst on women, men also do suffer from – and do so colossally.**

Yet, it is hetero-reality (which men *and women* uphold to varying degrees in their social worlds as a functional ideology) that lies at the core of patriarchy and that continues to foreclose all possibilities of full substantive justice for women.

Hetero-reality – the idea that *women are made for men, belong to men, or exist for men* – often procures its legitimacy and its preservation from the religions.

While the primary sacred texts of nearly all the major religions do have passages that reinforce hetero-reality, the Qur'an is almost unique in projecting an *anti*-hetero-reality narrative.

This paper explores why in spite of Qur'anic teachings, the lived experiences of Muslim women and men in social interactions in today's world are evidently so ideologically rooted around hetero-reality.

## **DOWRY AND BRIDE-PRICE**

Dowry and bride-price, currencies of exchange that are known in one form or another in almost all contemporary populations and found nearly in all historical societies, derive their sustenance from patriarchy but at bottom have origins rooted around hetero-reality, which as an idea was, and *is* ubiquitous in all human cultures. Two-thirds of the 1,267 human societies recorded in the *Ethnographic Atlas* <sup>6</sup> (Murdock, 1967) had bride-price as a tradition, and 4% of those societies had dowry. But dowry is much more significant than this would suggest, since the societies that constitute this 4% make up about a third of the world's population.

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<sup>6</sup> A well-known classic to students and scholars of Cultural Studies and related fields

While dowry has been historically popular in Europe and Asia, bride-price has been the more popular in one form or the other everywhere else.

Dowry refers specifically to the payment at marriage (in money, gifts, property and/or other valuables) that is made from the bride's family to the groom and/or his family, as part of the necessary <sup>7</sup> cultural and/or religious rites of that marriage. The bride-price on the other hand is the payment at marriage (in money, gifts, property and/or other valuables) that is made from the groom and/or his family to the bride's family (but *not* to the bride), as part of the necessary cultural and/or religious rites of the marriage.

In Asia, not only is the practice spreading, the values of dowries are rising alarmingly – often more than the married couple's income for *many* years. In East Africa, as in other places such as South-eastern Nigeria<sup>8</sup>, the values of bride-prices are rising equally alarmingly.

### ***Bride-Price:***

As earlier cited, bride-price was historically almost universal <sup>9</sup>. It was (and is) still practiced in some form or the other on every continent – in some continents only now by native peoples, or significantly by immigrant or Diaspora populations. Bride-price has origins that date back to antiquity. In every case, bride-price was rooted around the primitive practice of 'marriage by purchase' or *bride-sale*, although as history unfolded, 'marriage by purchase' did not always imply in every culture and historic period the purchase of a piece of property (Westermarck, 1926).

Yet hetero-reality must have come into being with the earliest human settlements when men could purchase women for wife, often doing so by parting with livestock, crop yields and other valuable property (a form of trade by barter).

### ***Bride-price as Currency for Bride-Sale***

This most primitive notion of bride-price as the currency for bride-sale has survived till today. Even though the bride-price is fading in my own ethnic group (the Yoruba of Nigeria) where bride-price is known as *owó-ori obinrin*, its vestiges remain evident. Bride-price is reaching alarming proportions amongst the Igbos<sup>10</sup> of my country where the bride-price is known as *ego-isi nwanyị*. Literally translated, both *owó-ori* and *ego-isi* mean the same thing: the "cost (of a) woman's head". Even linguistically, the implication is unambiguous. In many parts of Africa (and elsewhere) a woman can still be acquired with exchanges of livestock and other agricultural produce. This form of trade by barter persists today across East Africa (Yngstrom, 2002).

### ***Bride-Price as First Payment for a Unique Form of Prostitution***

In many primitive societies, marriage was no more than a peculiar form of prostitution where a woman trades sexual servicing for food and shelter, and commits herself to having only one *client*. Bride-price in that context was nothing more than the first payment for the sexual and emotional servicing of men and children. That many men in bride-price societies still bring up the issue of bride-price when expressing displeasure with a wife who is either too tired or not in the mood for intercourse is a testimony to the resilience of a dated idea rooted in hetero-reality. Responding to this historic reality of sex being always (economically) compulsory for women within marriage, some radical (and lesbian) feminists went as far as naming all marriage as prostitution<sup>11</sup>.

### ***Bride-Price as Compensation for the 'Loss' of a Daughter to Another Family***

Flowing from all of the above, and given that these societies were patrilocal (the bride moving out at marriage to live with her groom's larger household), it became the fundamental reality across much of history that girls were being raised only to be 'lost' to another family at marriage, and the bride-price was demanded - and given - as a fitting compensation for such a loss.

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<sup>7</sup> Necessary, indeed obligatory – both in the case of dowry and bride-price – in so far as there being the *explicit* understanding in every society where they exist, that without these payments, the marriage would be null and void.

<sup>8</sup> I am Nigerian, and am very familiar with contemporary Igbo (Ibo) practice in South-eastern Nigeria. An Igbo woman who is a medical doctor or employed lawyer may attract a few million naira (some tens of thousands of US dollars) as bride-price today, even while the average Nigerian's *annual* income is well under a thousand US dollars. A woman with secondary school education alone will command well over a hundred thousand naira as bride-price today.

<sup>9</sup> See note 3 above

<sup>10</sup> note 5 above

<sup>11</sup> (Cronan, 1973)

### ***Bride-price as Expression of Gratitude for Raising a 'Good Girl'***

Given that the denial of economic rights to women all through history was universal and acceptable, and given the resultant value placed on sons as earners of income capable of caring for parents in old age; girl-children have always been more burdens than blessings. Even though in most pre-modern societies, children represented forms of life insurance and social security for their parents, the very poor social status of girls and the low economic status of women meant that women's capacity to economically assist aged parents was very limited. Notions of sons being dear and daughters expensive gained strength. The incentive for raising a good daughter being so low, raising one good enough to be chosen for wife was thus a feat requiring a gift of gratitude from the family making that choice. Notions of gender justice being so undeveloped, the need to reward a groom's family for raising a good son-in-law was never considered, much less thought of as sufficient to erase the need for bride price. Everywhere that bride-price has survived, there are significant sections of the population that identify '*gratitude to the family*' as central, thus projecting this as a functional basis for bride-price.

### ***Bride-price as a One-Time Payment to In-Laws for a Wife's Unpaid Labour***

Even though unpaid, women's labour became increasingly valuable, particularly in agriculture, and bride-price became (particularly in patrilocal cultures) more and more a compensation to the bride's natal family for the pair of working hands being added to the groom's family (Mbughuni, 1994). Bride-price is thus a one-time payment for a wife's unpaid labour within marriage - except that it was always paid to others, never to the woman herself.

### ***Bride-price as a Compensation for Lost Procreative Potential***

Central to hetero-reality and patriarchy has been the control of women's (sexual and especially) reproductive powers. A man could enjoy possession of his wife and exercise ownership (and custody, in the event of divorce) upon his children if he paid the bride-price at the commencement of the marriage. Progeny were part of the wealth of men. In exogamous communities where women married out of the village, clan or social group, parting with progeny, even daughters, not only reduced the children available, but also meant the loss of future progeny and *descendants* which children and grandchildren so powerfully symbolised.

While one of the above is usually the central basis for bride-price from culture to culture, it is more common to find multiple underlying premises where several of the above mutually reinforce one another both as foundations for bride-price as well as bases for the perpetuation of the practice.

### ***Dowry:***

Even though this paper addresses bride-price, mention must be made of dowry for obvious reasons that shall become even more pertinent as the central arguments are laid out.

Dowry, the payment at marriage that is made from the bride's family to the groom and/or his family, generally rests on two broad premises: *Dowry as Inheritance* and *Dowry as 'Groom-Price'*.

#### ***1. Dowry as Inheritance***

So total was the notion that women were *owned* persons that in many ethnic groups including mine (the *Yoruba* of West Africa), women were in certain localities inherited as actual property up till about half a century ago. I met, knew and spoke to a man born in the early 1930s, who inherited his first wife from his elder brother who had died suddenly. I have also heard innumerable other accounts of men inheriting the wives of deceased brothers, or, especially in royal lineages, the younger wives of their deceased polygamous fathers.

Given hetero-reality, women were historically believed in many societies to have been *made for men*, when not seen as *belonging to*, or *existing for* men. The denial of inheritance rights to women has thus been always fundamental to hetero-reality: since historically, women were themselves a special class of *property*, always higher than the status of the slave and the non-human property, but certainly lacking the autonomy or the personal status of (free) men. Women thus lacked the status of their male siblings who alone had any right to share in the property of deceased parents. Within patriarchy, dowry in many ways is a half-hearted effort to mitigate the social violence and grave injustice that the historic denial of inheritance rights to women represents. Even though *controlled* by husbands, women kept *ownership* of their dowries, which they could apply or retrieve upon divorce.

Starting with Goody (1973), scholars began to analyse dowry as a *pre-mortem inheritance bequest* at marriage, upon a daughter by her very kind and indeed altruistic parents who know she shall have nothing to inherit from

their wealth upon their demise and wish to protect or insure her (Sharma, 1980), (Chen, 1985). Botticini and Siow (2003) show however that in patrilocal residential settings (where a woman moved out at marriage to join her husband in his home) dowry actually functioned to discourage the woman from seeking any claim to property upon her father's death. Through that purview, dowry, while having the short-term effect of mitigating the consequences of the denial of inheritance rights to women; merely served to validate and culturally legitimise that denial. In many ways then, the fundamental injustice was preserved. Secondly, because women often maintain ownership, though not control over the dowries paid to their husbands, women can leverage their dowries in influencing their marital threat point in the event of a divorce, and to some extent, their share of marital output (and thus welfare and well-being) within the marriage (Manser and Brown, 1980), (McElroy and Horney, 1981), (McElroy, 1990) and (Lundberg and Pollak, 1993). Here too, dowry serves to minimise or insure against (rather than remove) more fundamental sources of injustice to women within the marriage institution. No attempt is being made to trivialize evidence showing that higher dowries have sometimes resulted in better welfare for wives, for example in China<sup>12</sup>, by influencing their marital threat point in the event of divorce and increasing their share of marital output.

I only seek to show how dowry fails to address the fundamental injustice and only functions to perpetuate other forms of social violence against women.

## 2. Dowry as 'Groom-Price'

Even when dowry operates as a 'groom-price', it does so through various channels that also derive their legitimacy from the specific gender imbalance that patriarchy constructs into human marriage in most societies. Two of these channels are here considered: (a) 'marriage squeeze' and (b) women's lower human-capital.

(a) *Marriage-Squeeze*: In spite of there being only 927 women to every 1000 men (Dreze and Sen, 1995) in India for example - a situation that itself derives from the cultural preference for male children and the role it plays in, amongst others, the lower nutrition and quality-of-care available to girls and the consequent higher mortality amongst girl-children; and with the advent of modern technology to accurately determine sex before birth, the increasingly rampant termination of pregnancies known to be of female fetuses;- a marriage-squeeze still ironically exists where there is an 'excess supply' of wives (Caldwell *et al*, 1983). The marriage-squeeze exists nonetheless because (i) given hetero-reality where women's purpose is to be *for* men, the single woman is defined as 'loose' in the promiscuous sense. The state of being *unattached to any* man is thus psychologically equated with the state of being *available to any* man. Cultural notions about women and marriage thus create the existence of powerful social sanctions against women who are not married by certain ages, while men may marry at *any* age or not marry at all. Women and their families are often faced with desperation, or at least competition that forces them to create huge incentives (in form of a groom-price dowry) for potential grooms in order to equilibrate the difference between women's need to marry quickly and men's lower need for (early) marriage (see Bhat and Halli, 1999). Since a sound economic analysis of well-being and 'marital happiness' must be based not only on the consumption of material goods, but also on non-material goods such as 'honour', 'reputation' and 'good name', women thus have a higher desired utility from marriage than men – and thus a greater 'need' to marry. (ii) Even apart from the likelihood that older males would be more likely able to afford marital life on the whole than younger males, other cultural notions compel women to marry older men outside their own age cohorts (Rao, 1993a), so that whereas population growths and the prevalent higher male-female ratio cited above ought to mean the availability of more men to choose from, women constantly compete for the fewer men in the higher age cohorts. This creates a socio-culturally imposed husband-scarcity that could only be overcome by granting incentives (in form of a groom-price dowry).

(b) *Women's Lower Human-Capital*: Women's lower human-capital creates another need for a groom-price dowry. This also has a two-fold dynamic: (i) Central to patriarchal constructs of the family was the idea that unlike sons who earned a living and gave support to parents in old age, daughters were no more than burdens, since women were not allowed to work for a living. Sons were dear and daughters expensive, only to be raised and then 'sent away' at marriage. Dowry was thus *compensation* to the groom (and his family) for the burden they were taking over by marrying the woman (Rajaraman, 1983). (ii) At another economic level, patriarchy has always operated through powerful social norms to inhibit the acquisition of market-oriented human capital by women, instead promoting the procurement of household-oriented human capital, which can only be fully utilized within the context of marriage (Rao, 1993a), (Rao, 1983b). This represents a second powerful cultural element in dowry societies that makes women more economically significant within marriage and thus requires

<sup>12</sup> See Zhang and Chan (1999)

women to 'need' marriage more than men. Larger and larger incentives therefore have to be offered to prospective grooms.

Two pertinent issues require comment after detailing dowry and bride-price above.

In Becker's landmark treatise on marriage (1991), he asserts that dowry and bride-price economically serve identical social functions and are differentiated *only* by the direction of the efficiency transfer. I argue that such analysis is invalid. As I have shown above, whenever dowry serves as a *pre-mortem inheritance bequest*, rather than as a *groom-price*, it stops being merely the converse (or the reverse-analogue) of bride-price. Equally pertinent is the fact that whereas dowry is a downward *inter-generational* transfer from the bride's natal family into the new conjugal unit; bride-price is often *intra-generational* (paid by family to family), and thus, brings no benefit to the conjugal unit. Even when it's an *upward inter-generational* flow, as when paid by groom (rather than his family) to the bride's family; bride-price has no positive economic impact on the conjugal unit.

In almost all cases, dowry and bride-price are associated with fundamental violence against women – at both the physical and the psychological levels (Leslie, 1998), (Sheel, 1999). Beyond violence, the denial of inheritance and many property rights to women is anchored around dowry and bride-price (Mbughuni, 1994), (Gopal and Salim 1998), (Srinivasan and Lee, 2000), (Yngstrom, 2002).

*Dowry murders*, most often committed by burning to death, claims over 15,000 women in India alone, *every year*<sup>13</sup>. Other not-so-final forms of violence including battery and torture are perpetrated on incalculably massive scales against women who are unable to pay additional dowry demands, or bring too low a dowry into marriage. *Dowry suicides* are rampant by women unable to cope with the physical and psychological suffering sometimes involved.

Elsewhere, under bride-price, endemic levels of violence against women occur within marriage, inflicted by men who feel justified in seeing their wives as owned, a status often accepted by women as inevitable. In Uganda and elsewhere in East Africa where bride-prices must be refunded upon divorce, women are trapped in horribly abusive relationships incapable of self-redemption and forsaken by their male relatives who received all the bride-price when the marriage began (Ndira, 2004). Husbands feel justified in inflicting body harm on the wives they have *acquired*. All reproductive decisions, including when, and how often to have children, are made by men, their wives typically having no say. Millions of husbands who have contracted HIV/AIDS in East Africa insist on their right to the unlimited sex they have paid for at the start of the marriage. For both men and women, bride-price in many cases forecloses imaginations that frame human marriage outside the narrow mindset of always seeing commitment in terms of possession.

Notwithstanding the harm that dowry and bride-price entail for most women, it ought to be understood right away that women as well as men are almost equally invested in maintaining the practices. Powerful cultural and religious symbols imparted during socialisation processes, as well as immediate or short-term gains and other imperatives ensure that this is so (Srinivasan and Lee, 2000). Women take leadership in negotiating dowry and bride-price values. They do the business of harassing daughters-in-law who bring in small dowries, or (under bride-price), they legitimise violence against daughters-in-law that fail to act properly as wives whose prices have been fully paid. These powerful cultural and religious symbols imparted during socialisation processes along with other imperatives, ensure women's collaboration in their own subjugation.

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<sup>13</sup> Because of social stigma, and because many parents would rather be quiet at the death of their daughter rather than be exposed to social ridicule (in rare cases even going ahead to marry another daughter into the family where one had been killed); dowry deaths are inevitably vastly under-reported. Official statistics for 1998 showed only 6,917 dowry murders in India (NCRB, 1998)

## PRE-ISLAMIC MAHR

Bride-price was found in all Semitic societies (Smith, 1927), (Stern, 1939), where it represented no more than the currency for bride-sale. Both polygyny, and concubinage were common amongst the Jews and the Arabs (Patai, 1959), (Goode, 1963). The Jewish torah – (and) the Old Testament of the Bible record many cases of polygyny and concubinage by the patriarchs and the Biblical prophets<sup>14</sup>.

*Mahr* (sometimes written *mehr*) is the Arabic word for bride-price and has its aetiology in the root *m.h.r.*

In Hebrew, a sister language, a similar term, *mohar*, was used for bride-price. This is still used by Jews today to denote their version of the bride-price.

Amongst the pre-Islamic Arabs, the dowry was unknown. It was bride-price that was practiced - sufficiently institutionalised so that of the over thirteen 'marriage-types' found (al Alusi, 1922), (Jum'ah, 1949); only four did not involve bride-price as a central component of the marriage.

These four are:

- (a) *istibdaa'* or wife-lending, in which men lent out their wives to have intercourse with men of distinction or nobility, usually done in the search of noble children over whom they exercised paternity
- (b) *akhdaan* or the lovers' 'secret marriage' which was socially accepted but was considered shameful and terminated once the relationship became publicly known
- (c) the '*errébu marriage*' (a practice also found amongst the Jews) in which a father with no son adopted a young man to cohabit with his daughter in the hope that his daughter would then bear him a son over whom he (and not the adopted young man) exercised direct paternity (even though such a 'son' would be a grand-son with a different biological father). Such a son would then preserve his name and lineage
- (d) marriage by capture in which men would carry out a military raid on another village or a bandit on a desert road and capture women to make wives of.

All the pre-Islamic Arab marriage-types below outlined had the bride-price as a central component.

- i) Direct *Marriage by Purchase*, in which a father was paid a *mahr* representing his daughter's worth, was not uncommon, particularly in exogamous communities where marriage (especially to wealthy men) of other tribes was fashionable. Here, in line with hetero-reality, the wife was for all intents and purposes, a valued property just higher than a slave.
- ii) *Marriage by Contract*, in which a *mahr* was set by contract. Even though the wife *belonged to* her husband, this was a full-fledged marriage with all contractual responsibilities and normal marital consequences. Status outcomes depend on the power dynamics of patriarchy as moderated or enhanced by the specific terms of the contract negotiated by her father/guardian.
- iii) *Mut'ah Marriage*, a *temporary* marriage favoured by visiting strangers and travellers in which a *mahr* was paid for woman for a limited specified period of time. A temporary wife was nothing but a glorified one-client prostitute, owned for the period agreed when her guardian was paid a *mahr*.
- iv) *Marriage by Exchange* in which a man acquired a bride and paid for her using his own wife or daughter as *mahr*. In such trade-by-barter, the swapped women always had the status of property, merely changing owners with the marriage.
- v) *Marriage by Inheritance* was quite common. Heirs of deceased husbands inherited widows. For the same *mahr* paid by the deceased, the heir could marry the widow. For the same payment he could stipulate that she remain permanently in widowhood, never re-marrying. He could also contract her to another man. Here too, the woman was property.
- vi) *Maqt Marriage* specifically referred to the acquisition by a man of his father's divorcee or widow.
- vii) *Mahr-By-Service Marriage* was also common wherein, instead of money or goods, a man unable to pay offered his service to his prospective bride's father, usually doing so as a farm-hand or some other form of labourer, for a specified period of time.

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<sup>14</sup> The first book of the Bible (Gen. Chapters 29 and 30), amongst others, record polygamy, with two sisters as co-wives to the same husband. Gen 16 verses 1 and 2 record cohabitation with slaves having the status of concubines.

- viii) *Sifaah Cohabitation* was an experimental marriage in which the young couple cohabited to assess their compatibility. If agreeable, the cohabitation was upgraded to marriage. If not, it was terminated.
- ix) *Concubinage* was common amongst the pre-Islamic Arabs, just as the Jews practised it at the time<sup>15</sup>. It was a given almost throughout history that a man was entitled to intercourse with his slave-girl. That men engaged in sexual intercourse with their female slaves was both common and unremarkable. Childless wives preferred their husbands cohabiting with a slave-girl (upon whose child they would exercise full maternity), rather than having to put up with a free co-wife within a polygamy.

In all the above cases, *mahr* was paid to the bride's father or male guardian, *never to the bride*.

Almost all of the above marriage types were characterized by polygyny, by occasional polyandry<sup>16</sup> and by monogamy. Much 20th century Western (Orientalist) writing however chose to see monogamy as the exception rather than the rule, necessarily exaggerating the prevalence of polygyny in Arabia<sup>17</sup>, both before the advent of Islam, and since.

Within a generation of the advent of Islam, all but one of the marriage-types above had gone into extinction.

Cohabitation with slaves survived into Islam, slavery being a nearly universal practice, and an integral unalterable component of the global economy till about 200 years ago.

All other marriage types were prohibited and replaced by the Islamic marriage. The concept of *sadaaq* (marriage-gift) then emerged to replace the *mahr*. But as history has shown, the *mahr* (bride-price) did not quite die out.

I will later argue on the role of *language* in perpetuating patriarchy. Here, I only point out the significance and the potent symbolism presented by the reality that the noun *mahr*, in pre-Islamic, classical as well as contemporary Arabic, linguistically denotes the *bride-price* paid to *acquire a wife* as well as the *ransom* paid to *free a slave*<sup>18</sup>.

It is equally significant that although *mahr* was the term common in the language of the Arabs as the Qur'an was being revealed, the term was never used in the Qur'an. Several other terms were used instead. As I will show later, the difference between *mahr* and *sadaaq* is not merely linguistic. The difference was the doctrinal platform for a fundamental socio-economic and cultural transformation.

The definitive transition from *mahr* to *sadaaq* was a revolution against hetero-reality, a revolution that Muslim history eventually stifled.

**Today, most Muslims use the term *mahr* to refer to the marriage-gift stipulated by, and named *sadaaq* in the Qur'an. In our marriage practices and rites, we also mostly live out the *mahr*, rather than the *sadaaq*. Most potently, in our ideology of marriage – and our psychology of marital sexuality, of reproductive rights and prerogatives – we, men as well as women, most often think *mahr* rather than *sadaaq*.**

**Instead of dying out, the *mahr* became established in Muslim culture – sustained, yet permanently at odds with the text and intent of the Qur'an that all Muslims believe come directly from God.**

Before defining and discussing *sadaaq* – before contrasting it with *mahr*, I will show how hetero-reality operates through religious symbolism and ideologizing.

<sup>15</sup> See note 11

<sup>16</sup> 'Abd al 'Ati, Hammudah (1982) at pp 99 records polyandry (a woman having several husbands) as one sub-type of "various kinds of laxity, sexual hospitality, and sex communism (that) existed in some (pre-Islamic Arab societies)". After citing contradictory arguments from both Western and Arab scholars, he debunks earlier Orientalist claims that polyandry was a "common marriage pattern" in pre-Islamic Arabia, he shows that polyandry was the rare exception rather than the rule. 'Abd al 'Ati identifies two forms of polyandry; one very much like prostitution, and the other done in the search for children of 'special breeding'.

<sup>17</sup> As Edward Said (1978) revealed in his classic, *Orientalism* (the book from which the field of Post-colonial Studies ultimately emerged); orientalism had no objective more fundamental than placing scholarship in the service of imperialism, and thus, for the orientalist, the denigration of its subject matter was always compulsory and inevitable.

<sup>18</sup> Standard and advanced dictionaries of Arabic are most likely to list for *mahr*, entries such as *bride-price*, *ransom*, *stake*, and *cost* as the most appropriate usages of the term.



## RELIGION AND THE *WOMEN-ARE-MADE-FOR-MEN* NARRATIVE

It is possible to lay out a disquisition covering all major religions. A consideration of Judaism and Christianity (before going to treat Islam) may be sufficient within the context of this paper, to demonstrate how, right from the beginning, hetero-reality was subsumed into the foundations of most religions to later become the platform upon which a patriarchal world view and mindset would be constructed.

Fundamental to the historical narrative of the relationship between God and human beings as charted by Judaism and Christianity is the *creation story* as recorded in the book of Genesis, the first of the Pentateuch<sup>19</sup> that begin the Jewish Torah (also the first book in the Old Testament of the Christian Bible). It's a story about much. But hetero-reality and patriarchy are central. Other major religions have similar narratives around the origin of human beings – of men and women.

"It is not good that *man* be alone", the scriptures of old<sup>20</sup> declare, "I will make him a helper (woman)". So unambiguous is women's existence made conditional, dependent and secondary to men's, that no other analysis than the one conveyed is possible or reasonable. Women exist because men do, and not *vice versa*, period.

### *Women exist for men*

St Paul, the first teacher of the Christian Church and author of several books and letters of the Christian Bible goes further: "For a man ought not to cover his head, forasmuch as *he is the image and glory of God: but the woman is the glory of the man. For man is not of the woman, but the woman is of the man. Neither was the man created for the woman, but the woman for the man*"<sup>21</sup>

For several millennia, and for the last 19 centuries in the case of the Church, Judeo-Christian doctrine was unambiguous: *women are created for men*.

If such scriptural passages date hetero-reality at the emergence of religion, no doctrine more effectively institutionalises patriarchy in Judeo-Christian tradition than the central idea of woman's culpability for the *original sin*<sup>22</sup> – and thus, the supposed intrinsic sinfulness and moral incapacity of women (Daly, 1973), (Morny, 1996).

The Fathers of the Church, as did their predecessors throughout history attempted to disparage women's sexuality while at the same time acknowledging women as part of the blessed pattern of creation. Women are 'weaker', more easily tempted and deficient in moral capacity. At the same time, these inferior beings are

<sup>19</sup> The 'Five Books of Moses': Genesis, Exodus, Leviticus, Numbers and Deuteronomy

<sup>20</sup> Genesis Chapter 2 verse 18

<sup>21</sup> 1 Corinthians Chapter 11 verses 7 - 9

<sup>22</sup> Genesis 3 is fundamental to the understanding of the origin of sin in both Judaism and Christianity. The passage is here reproduced from verse 1 through 19: "Now the serpent was more crafty than any of the wild animals the LORD God had made. He said to the woman, "Did God really say, 'You must not eat from any tree in the garden'?" The woman said to the serpent, "We may eat fruit from the trees in the garden, 3 but God did say, 'You must not eat fruit from the tree that is in the middle of the garden, and you must not touch it, or you will die. "You will not surely die," the serpent said to the woman. "For God knows that when you eat of it your eyes will be opened, and you will be like God, knowing good and evil." When the woman saw that the fruit of the tree was good for food and pleasing to the eye, and also desirable for gaining wisdom, she took some and ate it. She also gave some to her husband, who was with her, and he ate it. Then the eyes of both of them were opened, and they realized they were naked; so they sewed fig leaves together and made coverings for themselves. Then the man and his wife heard the sound of the LORD God as he was walking in the garden in the cool of the day, and they hid from the LORD God among the trees of the garden. But the LORD God called to the man, "Where are you?" He answered, "I heard you in the garden, and I was afraid because I was naked; so I hid." And he said, "Who told you that you were naked? Have you eaten from the tree that I commanded you not to eat from?" The man said, "The woman you put here with me - she gave me some fruit from the tree, and I ate it." Then the LORD God said to the woman, "What is this you have done?" The woman said, "The serpent deceived me, and I ate." So the LORD God said to the serpent, "Because you have done this, Cursed are you above all the livestock and all the wild animals! You will crawl on your belly and you will eat dust all the days of your life. And I will put enmity between you and the woman, and between your offspring and hers; he will crush your head, and you will strike his heel." To the woman he said, "I will greatly increase your pains in childbearing; with pain you will give birth to children. Your desire will be for your husband, and he will rule over you." To Adam he said, "Because you listened to your wife and ate from the tree about which I commanded you, 'You must not eat of it,' "Cursed is the ground because of you; through painful toil you will eat of it all the days of your life. It will produce thorns and thistles for you, and you will eat the plants of the field. By the sweat of your brow you will eat your food until you return to the ground, since from it you were taken; for dust you are and to dust you will return."

constantly the downfall of the stronger men, because women's bodily charms and wiles are vehicles of sin and depravity for the more stalwart souls, who would otherwise have maintained their spiritual integrity. The woman's only exit from this impasse was to maintain the state of virginity, which thereby miraculously freed her from her carnal disadvantages, and even conferred on her the honour of equivalency of male status (Ruether, 1974).

In original Christian tradition, sexuality itself (and especially female sexuality) was evil<sup>23</sup>. All the Church Fathers<sup>24</sup> viewed sex, women and marriage very negatively (Ruether, 1974). Celibacy was the favoured status, and represented the highest virtue on the Christian scale. Sex and sexuality were necessary evils valued only for procreation. For 'mere sensual ends'<sup>25</sup>, the believer best avoids sex. Thus, even within marriage (a necessary evil for procreation), sex may not be for pleasure, and marriage was both monogamous and indissoluble<sup>26</sup>. Innumerable celibate saints wrote of how during sleep, they were approached by "voluptuous and lascivious female demons, *succubi*, who tempted and tormented them"<sup>27</sup>.

The idea that women are tempting, immoral and irrevocably tied to sin is one of the central bases for men's wielding power on the sacred – not to say the profane – and is the ideological well-spring for maintaining patriarchy in all things sacral.

The story of the original sin (as recorded in the book of Genesis) and especially its outcome, is a powerfully symbolic and dramatic narrative that operates at the subconscious level – and sometimes consciously – to shape the thinking of many believers in (and affiliates of) the three Abrahamic<sup>28</sup> religions; Judaism, Christianity and Islam<sup>29</sup> – between them accounting for half of humanity<sup>30</sup> today.

Hetero-reality was thus rooted in Judeo-Christian accounts of *creation* – of the origin of men and of women – just as patriarchy was rooted in popular accounts of the *original sin*.

## **WOMAN AND MARRIAGE IN THE QUR'AN**

It would require at least a whole book<sup>31</sup> to address the subject of *interpretation* in the reading of the Qur'an on the status of women. Whole books<sup>32</sup> have been written on the broader issue of textual (and other) *authority* in reading Islam's sacred texts.

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<sup>23</sup> Hobhouse, 1951

<sup>24</sup> The writings of St Paul (some already quoted), the writings of Tertullian (born 160), and the writings of St Augustine (born 354) and St Thomas Aquinas (died 1274) are only representative.

<sup>25</sup> cf. Hobhouse, 1951

<sup>26</sup> The indissolubility of marriage was fundamental to the status of marriage as a sacrament. For over nineteen centuries, marriage was *for better for worse* in the Church. A wife was not allowed to divorce even a cruel and abusive husband. She was encouraged instead to pray for the reform of his character. Till today, the Catholic Church still strongly discourages divorce.

<sup>27</sup> Nuns soon began asserting that they were visited by equally alluring male *incubus*, who forced intercourse on them during sleep. The Church Fathers mentioned in the note above, as well as Pope Innocent VIII, Benedict XIV and other Church leaders dealt with the issue both seriously and extensively.

<sup>28</sup> I use the term 'Abrahamic Religions' to refer to the three religions that name Abraham as the Father of Faith. I find this to be preferable to the more common term 'The Three Monotheistic Religions' – a phraseology I find problematic, with its many assumptions and ideological baggage.

<sup>29</sup> This is in spite of the fact that, as we shall later show, the Qur'an (the primary source of Islam) places culpability for the first sin on Adam, rather than on Eve (Hauwa). We shall show later how Judeo-Christian tradition on the origin of women was to influence Muslim doctrine.

<sup>30</sup> If, as current numbers suggest, there are some 1.2 billion Sunni Muslims, 100 million Shiite Muslims, 1 billion Catholics, 900 million Orthodox and Protestant Christians, and 20 million Jews; then the three religious traditions command some 52% of the world's population. These numbers are not numbers of 'believers'. They show *affiliation* only – whether 'committed' or 'nominal'.

<sup>31</sup> *Qur'an, Liberation and Pluralism*. (Farid Esack, 1997) and *Speaking in God's Name: Islamic Law Authority and Women* (Khaled Abou El Fadl, 2001) are two examples of books (written by scholars who are well-grounded in the classical epistemology of the Islamic tradition) that grapple with *interpretation*. Both books are anti-patriarchal. The former espouses a reading of the Qur'an that is ideologically liberal; the latter book is orthodox in approach. A third book, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (Barlas, 2002), like Abou El Fadl's above, though deploying a separate approach, also argues from within Islam (rather than liberal thought).

<sup>32</sup> Two particularly exemplary works are Abou El Fadl's work named in the footnote above, and Wael Hallaq's (2001) *Authority, Continuity and Change in Islamic Law*

“Deferring to God and honouring the text requires a human being to exercise self-restraint in speaking for God and the text”<sup>33</sup>

**It is important to point out that the question as to whether the Qur'an is patriarchal or not is not a meaningful question from the perspective of the Qur'an itself, since its teachings are not framed in terms of claims made by either modern or historical patriarchies. I propose only to show the reality that since the Qur'an, though neutral, was revealed to (and in) an existing and continuous patriarchy, it has almost always been interpreted by adherents of patriarchies, who necessarily read their values into the text, often suppressing equally valid – indeed often more anti-patriarchal inherent meanings. I also propose to demonstrate, using the issue of bride-price how alternative interpretations are not only possible but desirable from the point of view of the Qur'an itself, not to mention Muslim women who are victimised by patriarchal interpretations.**

**This alone is my intent, not an apologetic pursuit to ‘defend’ the Qur'an, or more broadly, Islam, even if at all such defence can be shown to be necessary, or worthwhile.**

I will limit myself here to a close reading of the Qur'anic text on:

- (a) Creation – the origin of women (and men).
- (b) The original sin; and
- (c) The purpose of marriage.

### **Creation**

The very well-known Qur'anic declaration “*for **nothing** did I create jinns and human beings, except that they should serve Me*”<sup>34</sup> unambiguously refers to men and women in speaking of ‘human beings’<sup>35</sup>, and forecloses any other purpose for human creation. In spite of the prevailing phallo-centric and men-centric notions in Arabia at the time concerning the Creator's purpose in creating the female species, the Qur'an, in all its accounts on creation nowhere supports the idea that women were created either ‘so that men not be alone’, or for any other men-centric function. All humans, the Qur'an emphasizes, are created to worship and serve God<sup>36</sup> and every individual person has personal responsibility<sup>37</sup>. In many places elsewhere, speaking of creative balance, we are told God has created everything “in pairs”<sup>38</sup>.

It is standard Islamic doctrine rooted in both Qur'an and hadeeth texts that all souls have been created ‘at once’, and the only part of human creation continuing as part of the creative process is the ensoulment and development of physical bodies. Souls since created are only being individually introduced into spiritually inconsequential embryos at a specific point during pregnancy<sup>39</sup> to make up real, spiritually complete human individuals<sup>40</sup> (this being the doctrinal basis for Islam's more flexible position on abortion<sup>41</sup>). Within this

<sup>33</sup> Abou El Fadl, 2001. p 265

<sup>34</sup> I stay the closest possible to the Arabic text in my rendering of ‘*wa maa khalaktu-l-jinna wa-l-insa illaa li ya'budoon*’. See the Qur'an, *adh-Dhaariyaat* 51:56

<sup>35</sup> *al insa* (pronounced ‘*al ins*’ in the stand-alone form) refers to humankind. Yet, since language is seldom power neutral, especially on gender, *al ins*, ‘humankind’ will be found most often translated ‘mankind’, or simply ‘men’. Thus the most popular rendering into English language of the verse, “*for nothing did I create jinns and human beings, except that they should serve Me*” is written “*I have only created jinn and men that they may serve Me*”. There is no Arabic word in the verse for ‘**men**’ or man. A faithful adherence to the text here shows the intent of the Principal, the Author, free of patriarchal even if subconscious interpretations by agents, the interpreters of the Qur'an. It is significant that the Qur'an always addresses ‘humankind’ (*an-naas*), never ‘mankind’, which is what Muslim men always read, subconsciously and sometimes consciously inferring that humankind and mankind are synonymous terms. Given the deconstruction of gendered language over the past 50 years, we know they never were.

<sup>36</sup> The central purpose of Creation! This is basic Muslim doctrine, not a matter of *interpretation*. At least upon this, all Muslim theologians have been in agreement throughout history.

<sup>37</sup> Entire passages of the Qur'an (e.g. *at-Tahreem*, 66:10 to end) are dedicated to the doctrine of personal responsibility. As a spiritual entity before God, a wife (or a child) is totally independent. A wife, like her husband, is spiritually responsible to God alone. It is significant that the idea of personal responsibility is basic Muslim doctrine, not a matter of interpretation.

<sup>38</sup> The Qur'an cites the creation of everything “in pairs”: plants, human and animals, and other things ‘unknown to you’ as being amongst the mysteries of creation. Qur'an *Yaasin*, 36:36

<sup>39</sup> This specific stage of pregnancy is considered by most Islamic theologians to be at 120 days of gestation, or according to another *hadeeth* (reported saying of Prophet Muhammad) to be at 42 days.

<sup>40</sup> Pre-ensoulment, a foetus is considered a physical tissue (first *nutfah*, next *alaqa* and then *mudgha*), these being generally regarded as non-spiritual entities.

<sup>41</sup> All the schools of Islamic Law are agreed abortion is permissible at any stage of pregnancy if done to save the mother's health from danger, on the basis of the legal concept of ‘*the root is more important than the branch*’. Three of the four major schools (excepting only

purview, it is thus important to stress that accounts which place the origin of woman in the ‘rib’ of man, cannot be found in the Qur’an<sup>42</sup>. A very well-known verse, if rendered faithfully, reads as follows:

“O humankind, keep your duty to your Lord, who created you from a single soul, *and created out of her, her mate*, and scattered from both of them, countless men and women. Keep your duty to God through whom you demand your mutual (rights), and honour the wombs (that bore you). For God ever watches over you”<sup>43</sup>.

Yet, most renderings of the original text of the Qur’an render thus: “...*and created out of him, his mate*”, reading into the text a (patriarchal) culturally based popular understanding of the creation story<sup>44</sup>.

### **Original Sin**

Apart from many other differences with the *original sin* narrative in other religious traditions, it is uniquely Qur’anic that everywhere the fall<sup>45</sup> is mentioned; the active description is “*both of them*”<sup>46</sup>.

Thus:

“...then began Satan to whisper suggestions to *both of them*”<sup>47</sup>,

“...then did Satan make *both of them* slip (from the Garden) and get *both of them* out”<sup>48</sup>.

Nowhere in the Qur’an is it suggested that Eve tempted Adam. All related Qur’anic passages speak of *both of them* being tempted by Satan. Nor does the Qur’an anywhere award culpability to the woman. Indeed, *the Qur’an tells us that it was Adam (and not Eve) to whom Satan whispered the tempting suggestions*<sup>49</sup>. The very next verse to this is likewise unambiguous: “Thus did *Adam* disobey his Lord, and fell into error”<sup>50</sup>.

It is then ironic – indeed *abnormal* – that in spite of the picture painted in the Qur’an and shown above, it is those accounts of the original sin, where woman is inherently sinful, culpable for the original sin, tempting, immoral and deceitful; that is pervasive in Muslim consciousness – of men and of women.

**We shall later suggest why such an aberration exists.**

### **The Purpose of Marriage**

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the Maliki) accept other excuses for abortion, some, up to only 40 days of gestation, others up to 80 days, and some up till the 120th day of pregnancy.

<sup>42</sup> In original Christian theology for example, a whole series of symbols is woven around the creation of woman from the ‘rib’ of man. *Israa’iliyyah* hadeeth on this matter (hadeeth having their sources in Judeo-Christian doctrine) also found their way into Islam’s canons.

<sup>43</sup> Qur’an *an-Nisaa* 4:1. As explained below; language (translation and interpretation) are deployed in the service of patriarchy and shape consciousness as well as what is known.

<sup>44</sup> Arabic has the pronouns *his* and *her*, but not *it*. Inanimates are classified either *his* or *her*, depending on whether those inanimate objects are ‘masculine’ or ‘feminine’ (as exists in French). In this verse, the soul (*nafs*) is feminine. It would therefore also be right to render the verse as: *and created out of it, its mate* – if the ‘*her*’ used in the original text is understood as referring to the soul. But the rendering found in nearly all the most authoritative translations is: *created out of him, his mate*, a total departure from the text that fits culturally based popular understandings of male-taught creation stories. And that includes Abdullah Yusuf Ali’s highly valuable 1948 translation (the most visible, most well-known and the ‘least patriarchal’ of the authoritative English translations of the Qur’an). Here too, *Israa’iliyyah* hadeeth, having their sources in Judeo-Christian doctrine, found their way into Islam’s canons, and eventually into Muslim consciousness.

<sup>45</sup> I speak here of ‘The Fall of Man in the Garden of Eden’, the notion of ‘fallen angels’ being non-Islamic

<sup>46</sup> In the passages on creation and the fall (e.g. *al-Baqarah* 2:30-39; *al-A’raaf* 7:11-25) any reader of Arabic is struck by how ‘both of them’ is maintained in describing the event of the sin.

<sup>47</sup> Qur’an, *al-A’raaf* 7:20. Note, it was Satan, not the *serpent*. Nowhere is it suggested that Eve tempted Adam!

<sup>48</sup> Qur’an, *al-Baqarah*, 2:36

<sup>49</sup> Qur’an, *TaHa*, 20: 120

<sup>50</sup> Qur’an, *TaHa*, 20: 121. Emphasis mine.

It is pertinent to first emphasise that *nikaah*, marriage in Islam, is not a sacrament<sup>51</sup>. It's a contract<sup>52</sup>, its moral dimension making it also a covenant<sup>53</sup>.

**Three central purposes** built on **one foundational premise** are identified for Islamic marriage.

*Marriage for taqwa* ('faith and righteousness') is the foundational premise for Islamic marriage<sup>54</sup>. Not only does Islam place no value on celibacy, Islam names marriage a pious act, because of, and in addition to its other purposes and functions. Marriage, it is held, is itself a spiritually rewardable act of piety for both wife and husband. Not only is it considered conducive to *taqwa* (faith and righteousness), it is considered to make easier 'the doing of God's will'. Upon this, all the schools of thought in Islam are agreed. This is usually considered the doctrinal basis for marriage<sup>55</sup>. It is generally understood that either party may seek divorce if her/his 'faith and righteousness' became no longer attainable within the marriage.

Upon the above are rooted the three *central* purposes of the Islamic marriage. 'Central' because either party in the marriage may cite their unattainability within the marriage as a basis for divorce. The first of these is *primary*, and the other two *secondary*.

These three are:

- a) Marriage for love and compassion
- b) Marriage for legitimate sexuality
- c) Marriage for legitimate procreation

- a) *Marriage for love and compassion*: Several powerful narratives in the Qur'an establish love and compassion as central to the Islamic marriage. A most well-known verse reads:

"And amongst (God's) signs is this: that He created for you mates, from amongst yourselves, that you may seek in them tranquillity, and He places between you, love and compassion. Surely, in that are signs for people who contemplate"<sup>56</sup>.

*Muslims theologians have always attached much weight to the idea that love and compassion between husband and wife represent a significant element in the scheme of the universe, as well as one of the major signs of God's infinitude and beneficence. Friendship, companionship, and mutual support are implicit in many verses of the Qur'an that address marriage. Love and compassion are such central means and ends in the Muslim marriage that a party whose spouse no longer loves her/him, or now hates and is cruel to her/him has the right to seek divorce under Islam. It is unanimously understood, not merely as a social fact, but as a doctrinal teaching, that a worthy or fulfilling marriage cannot exist without love and compassion, which whenever missing, leaves the marriage failed.*

- b) *Marriage for legitimate sexuality*: Far from construing sexuality as inherently evil or attaching value to celibacy, Islam is perhaps the only major religion that defines sex as an act of worship – spiritually rewardable to both parties when it takes place within marriage<sup>57</sup>. Islam has always viewed a healthy

<sup>51</sup> Fundamental to the Christian (and many other) conceptions of marriage as a sacrament is the notion of: (a) indissolubility (b) monogamy (c) officiation by a priest, and (d) the religious unity of marriage. Whereas in Islam, (a) divorce is strongly discouraged but permissible when one or more of the central purposes of marriage become unattainable, and at least one of the parties seeks out of the contract. Divorce may become obligatory in some circumstance (b) Islam very strongly recommends marriage and so, in the absence of a direct *prescription* for polygyny, monogamy is assumed as the typical marriage form. But Islam though not prescribing polygyny, did not abrogate it either, as did Christianity. Instead, Islam made it conditionally permissible (c) officiation by an imam is not a requirement for *nikaah*, even though a benediction is recommended. Besides, Islam forbade the creation of a priesthood – except in the minority Shiite sect. (d) marriage to some categories of non-Muslims is permissible, so the family, strictly speaking, is not a 'religious unit'.

<sup>52</sup> The Islamic marriage is a contract that cannot be concluded without the mutual consent of the parties involved. Its terms are enforceable. Within legal bounds, it is open for additional but legitimate conditions that are also alterable. The marriage is thus socio-legal.

<sup>53</sup> Yet, it is not merely socio-legal. It also has religious foundations. The emphasis placed on the meanings and implications of verse 1 of Chapter 4 (*an-Nisaa*) of the Qur'an at all Muslim marriage ceremonies; make the role of God as 'Witness' to the contract a central element. The moral nature of this marriage makes it a covenant. Even though *not* a sacrament then, Islamic theologians have at the same time always understood the *nikaah* to be no mere secular or legal contract. Rather it's both a contract and a covenant.

<sup>54</sup> This is an unanimously agreed part of the generally understood meaning of Qur'an, *an-Nisaa* 'Chapter 4 verse 1

<sup>55</sup> Abd al 'Ati, Hammudah (1982)

<sup>56</sup> Qur'an, *ar-Room* 30:21

<sup>57</sup> About this all Islamic theologians are agreed. That much is implicit in the Qur'an as well as established by numerous authentic sayings of Prophet Muhammad.

sexual life as crucial to marriage. Sex as a function of marriage has been so central that all theologians have always agreed that a wife whose husband is impotent has the right to seek divorce<sup>58</sup>. Yet, central as it is, sex, unlike 'love and compassion', is *secondary*. No theologian has suggested for example, that an impotent paralytic man and say, a 65-year old geriatric widow who wants marriage but considers herself with no need for sex, cannot get married and have a worthy and fulfilling Islamic marriage, even if sex is not an element in such a marriage; as long as love and compassion exist.

- c) *Marriage for legitimate procreation*: Islam emphasizes that offspring are one of the central purposes of marriage, and encourages the having of children as both a social and religious good. Children as an end of marriage have been so central that a wife who strongly desires motherhood but whose husband is sterile has the right to seek divorce and remarry a man with whom parenting would be possible. A man similarly so desirous of offspring in the face of a sterile wife is allowed divorce, even though in this case encouraged to favour polygyny over divorce<sup>59</sup>. Yet, central as it is, reproduction or procreation, unlike 'love and compassion', is a *secondary* purpose. No theologian has suggested for example, that a post-menopause woman cannot get married and have a worthy and fulfilling Islamic marriage, simply because no children may come from such a marriage. Love and compassion would be the requisite and sustaining pillar for such a marriage.

**It would be possible to derive a range of other purposes for the Islamic marriage – including economic needs, social placement, interfamily alliance, and group solidarity. These may not merit being called central purposes since they are not elements upon which Islamic divorce is usually invoked.**

The above treatment of *Woman and Marriage in the Qur'an* has been both to contrast the Qur'anic ideals with those of other religions as well as show how so clearly possible a non-patriarchal reading of the Qur'an is.

Why such ideals are so rarely implemented in the lived reality of Muslims and why Muslim practice has always so miserably fallen short of the ideal is quite another matter.

## **SADAAQ**

It has been so far shown that *mahr* (bride-price) is rooted around hetero-reality and patriarchy. With origins so lost in antiquity and as a practice that has found sustenance, it has always stood for the *commercialisation* of marriage. Be it then in its naked form when it was paid and received as the currency for bride-sale, and when it *denoted the actual worth* of the bride; or be it in the less obvious form when it merely *symbolised the lost value* of a bride to her family, paying the bride-price was symbolic of *acquisition*, once accepted, it symbolised *possession* for the giver. The unhelpful coincidence involved in the word *mahr* denoting both the *bride-price* paid to *acquire a wife* and the *ransom* paid to *free a slave* has been pointed out. It has been also shown that *mahr* cannot be found in the Qur'an. It is used very infrequently in the hadeeth<sup>60</sup>.

*Sadaaq*, on the other hand stands for the marriage-gift given by the groom to the bride at marriage.

It comes from the Arabic root *s-d-q*. It was extremely significant in a culture where the nuances of language were always given great weight that when the Qur'an was being revealed, a form of the root *s-d-q* was used to establish and denote the marriage gift. In classical as well as contemporary Arabic, the root *s-d-q* has always meant *truth*, *sincerity*, *charitable gift*, *friendship* and *promise*. No other Arabic root has all these meanings. Thus *sidq* is truth, *saadiq* is sincere, *sadeeq* is friend, and *sadaqa* is both charity and the keeping of a promise.

<sup>58</sup> Abd al 'Ati, Hammudah (1982)

<sup>59</sup> A wife would easily obtain divorce from an impotent or sterile husband, polyandry being forbidden in Islam. But because the married state often provided women with economic security as well as other social needs, divorcing a wife over sterility or frigidity was never favoured as fair and just. Within that context, it was always regarded as unjust to punish a woman with the loss of her marriage for no fault of hers. When he could cope with it, and it was acceptable to the woman, the man was encouraged to favour the marrying of a new wife while maintaining his 'defective' wife, this being considered fairer to women in a context where women's sole source of economic provision was marriage.

<sup>60</sup> Whenever used in authentic hadeeth, it is always used in combination with terms such as *fareedah* to show that it's a God-given right and to set it apart from pre-Islamic *mahr*. The majority of *ahaadith* (pl. for hadeeth); sayings attributed to Prophet Muhammad, do not meet the classification of *saheeh* (undoubted authenticity) and do not carry the force of law.

The Qur'an sometimes deployed other synonyms<sup>61</sup> to refer to *sadaaq*, but never *mahr*, which always carried an unambiguous connotation to the Arabic-speaking peoples.

This significant transformation was not lost on the earliest Muslims.

*Mahr* was always about exchange: the bride-price in exchange for the bride. *Mahr*, bride-price, was thus paid all through history to the previous owner of a woman by the new party acquiring her – never to the bride herself. Islam abrogated this practice and stipulated that the *sadaaq*, the marriage gift, be given to the bride herself for keeps, and not to anyone else. In Islam, it is thus a divine injunction of doctrinal weight, not merely a custom; that the marriage-gift is given to the bride herself, not to her father or her relatives. All theologians of Islam are unanimous on this<sup>62</sup>.

Lest there be any doubt about the abrogation of the pre-Islamic *mahr*, the Qur'an declares that the bride alone has ownership of the *sadaaq*, and she ultimately decides what her *sadaaq* should be. Islam set no maximum<sup>63</sup>, nor is there a minimum<sup>64</sup>. The Qur'an empowers the bride to waive it altogether or make a gift of it<sup>65</sup>, if she wishes: she alone keeping the right to dispose of it as she pleases.

Whereas the value of the *mahr* was often a status symbol, the higher the bride-price, the higher the supposed status of the bride – and the groom that affords it. With *sadaaq* however, although setting no maximum, Islam seriously discouraged class distinctions and named marriages involving modest *sadaaq* values as the most blessed<sup>66</sup>.

Very importantly, unlike the *mahr* that consisted of money, property, valuable services, gifts or other items of definable economic value, early Muslims understood from Prophet Muhammad that the *sadaaq* did not even have to have an economic or material value at all<sup>67</sup>. Upon all these, the theologians are unanimously agreed<sup>68</sup>.

**A non-patriarchal, comprehensive study of the doctrinal, historical and social implications of *sadaaq* leaves one with only one conclusion: the *sadaaq* is of both symbolic and intermediate value.**

**The *sadaaq* represents an assurance to the bride that her groom will be *true* to her. It implies that the groom is entering the marriage with *sincere* commitment, and that this is a relationship based on mutual friendship. The *sadaaq* symbolizes *promise*. The meanings of *sadaaq* are all carried in the italicized words and this was a powerful symbol indeed. Intermediately, the *sadaaq* was an expression of the groom's cognizance of the economic responsibilities of marriage, and of his readiness to discharge all these**

<sup>61</sup> Three may come to mind here: *qintaar*, *ajr* and *fareedah*. In the Qur'an, *an-Nisaa* 4: 20, the term *qintaar* is used to warn men that upon divorce, they cannot take back the marriage gift, even if they had given a *qintaar* (a talent of gold or figuratively a whole treasure of wealth) as the *sadaaq* at the start of the marriage. Elsewhere, Qur'an, *an-Nisaa* 4: 25, the plural form (*ujoor*) of *ajr* is used. To emphasise *sadaaq* as a God-given right (and not a currency of exchange), the weighty term *fareedah* is used severally, e.g. Qur'an, *al-Baqarah* 2:236, 237. Most importantly, the verse establishing the marriage-gift uses the term, *sadaaq* with all the meanings and implications already explained above. The same verse gives the woman (and not anyone else) control over the *sadaaq*: Qur'an *an-Nisaa* 4:4

<sup>62</sup> Abd al 'Ati, Hammudah (1982)

<sup>63</sup> A few years after the Prophet Muhammad's death, it came into vogue amongst the women to demand exorbitant marriage-gifts, and Umar the second Caliph spoke against it in a public sermon, and recommended the fixing of a maximum amount for *sadaaq*. A woman in the congregation challenged him, asking why he was setting limits on a God-given right. She recited relevant verses of the Qur'an to argue her case and the supreme leader of the Islamic world admitted he lacked the authority to limit a God-given right. From that moment it has been unanimously agreed that there is no maximum figure for *sadaaq*.

<sup>64</sup> Nothing in the Qur'an or the authentic hadeeth supports the fixing of a minimum figure for *sadaaq*. It was the later reversal when *sadaaq* lost its meanings and took on connotations of *mahr* that theologians (in two of the four schools of Sunni Islamic law) set minimum values for *mahr* (three and ten dirhams respectively), in their own minds thinking it too cheap and improper to *acquire* a whole wife for anything less. The intent of *sadaaq* had been lost, replaced by the economics of *mahr*. In the family laws of many Muslim countries today, three and ten dirhams are enshrined, as if they were God-ordained.

<sup>65</sup> Qur'an, *an-Nisaa* 4:4

<sup>66</sup> It is a well-known hadeeth reported from the Prophet Muhammad, that the least costly and most easy marriages are the most blessed.

<sup>67</sup> In an account well-known to all Islamic theologians, a man called Abu Talhah had proposed marriage to a lady who had replied, "a man of your stature ought not to be declined. But you are not a believer and I am a Muslim. It is un-Islamic for me to marry you. But if you accept Islam, that will be my *sadaaq*, and no more will I ask of you". He later accepted Islam and that was the *sadaaq* for the marriage between him and his wife. Another companion of Prophet Muhammad wanted to marry a lady and had nothing to give her as *sadaaq*. He was advised to teach her whatever he knew of the Qur'an as *sadaaq*, and this being acceptable to the lady, the marriage was validated. It was common for wealthy Muslims at the time to give and receive very small nominal values as *sadaaq*. There are numerous other well-known authentic accounts that reveal the understanding of *sadaaq* that the early Muslims had.

<sup>68</sup> Abd al 'Ati, Hammudah (1982)

responsibilities subsequent to the marriage<sup>69</sup>. In determining that the *sadaaq* is for the bride for keeps, and in giving her all rights over it, including the right to waive it if she pleases, Islam removed all notions of exchange. Islam did not fix a *minimum* value (and the Prophet approved of marriages in which the *sadaaq* had been the teaching of a few verses of the Qur'an to the bride, or an amount of just two *dirhams*) so that *sadaaq* would not be seen in terms of a woman's worth, or as any form of economic compensation. It was indeed common for well-to-do Muslim men to give small nominal values as *sadaaq*, and for upper-class women to receive it.

Why then, did Islam fix no maximum value for *sadaaq* so that it would remain only nominal and symbolic?

It can be seen from all the above that the function was dual: *sadaaq* coming from the groom was symbolic of truth, friendship and sincerity – and *promise*. And by fixing no maximum, Islam at the same time allowed *sadaaq* to fulfil an economic role *for those women who needed it*, since they had the right to set the value of their *sadaaq* and receive it for keeps, or to waive it, or to receive it and give it away as they pleased. The *sadaaq* thus could *potentially* safeguard a woman's economic status and strengthen her financial position in the marriage if her context so demanded. Thus the option was left open to *the bride's discretion*. Yet, at all times, the decision on the *if* and the *what* of *sadaaq* lay with her as did ownership thereafter – removing from *sadaaq* all the compensatory and economic notions invested into *mahr*.

And why at all did Islam require a marriage-gift, or such a material symbol of a pledge from men and not a similar one for women? The answer is to be found in Islam's central focus at ensuring that the sacred always factored in the lived human reality. It is a universal reality that much more is at stake for a woman entering marriage than is the case with her groom, this being fundamental to the nature of human marriage itself. It is fundamental to the nature of reproduction and motherhood that women's vulnerabilities within marriage would always surpass men's.

That these vulnerabilities are never exploited is a key intent of Islam, I argue.

That most Muslim men see their very existence as invitation for their exploitation, has been a key achievement for hetero-reality and patriarchy.

The definitive transition from *mahr* to *sadaaq* was a revolution against hetero-reality, a revolution that Muslim history eventually stifled – a process that will be outlined later in this paper.

The difference between *mahr* and *sadaaq* encapsulates a whole range of ideas, sentiments and assumptions that have very grave implications indeed on Muslim women's status and well-being:

The *sadaaq* is a marriage-gift offered by a groom as a token of love and a pledge of truthfulness, trust and sincerity to a bride willing to take him and be unto him a friend, companion, lover and partner. The *mahr* as a practice and an institution symbolises "ownership", the fundamental premise of hetero-reality and patriarchy.

Under the one, the woman is wife. In the other case, she is *property*, something bought, and therefore something to be *utilized*. Under the one, a wife is a cherished friend and partner. With the other, she is a bondswoman that may be whipped or beaten for any action, inaction or provocation that her husband-master may wish to classify as *nushooz* – "rebellion". With the one, marriage is an institution where love and compassion are the guiding principles of sexual behaviour; with the other, marriage is legitimised prostitution where a woman trades sexual servicing to her husband in return for a price at the start (*mahr*); and shelter, food and clothing (*maintenance*) thereafter.

With *sadaaq*, a woman's right to property and paid labour was guaranteed<sup>70</sup>, with *mahr*, she was herself property, her labour in the physical and emotional servicing of men and children was 'natural' and marginal<sup>71</sup>.

<sup>69</sup> Under Islam, it is the duty of the husband to provide the economic needs of his family. Even if she has earnings more than his, his wife has no duty to provide the basic economic needs of the family, although she may help, and often does.

<sup>70</sup> It is a unanimously understood divine injunction that women's right to property is sacrosanct. Marriage in Islam does not grant any right to the husband over the wife's property, be it earned, inherited or otherwise acquired. Nor is there a community of property that automatically belong to 'husband and wife'. A wife owns all she brings into her marriage and all she subsequently acquires.

<sup>71</sup> It is interesting to note that under Islam, numerous authoritative theologians in history have ruled that a wife has *no* legal obligation to do the routine housework, even though she may, and often does: this being convenient to most family arrangements and the prevailing



Under the one, custody of children until at least puberty<sup>72</sup> rested with the mother; with the other, children, like their mother, *belonged* to their father upon divorce – as always.

Under the one, both husband and wife adhere to the Qur'anic principles of mutuality and consultation on all matters relating to sexuality and reproduction, including even breast-feeding<sup>73</sup>. In the other case, all decisions about when and how often to have children are made for the woman who has no say, and yet must repeatedly experience physical and emotional scarring as well as life-threatening situations in pregnancy and birth – motherhood becoming for her an *obligation* just as fatherhood is a *right* for her wedded husband. With *sadaaq* then, marriage is intended to be a source of joy and emotional stability. With *mahr*, marriage “protects” women in the same way that the institution of slavery was rigorously defended as “protecting” blacks in early American history. “*Protection*”: a dangerous euphemism for oppression.

It is tragic today that in our ideology of marriage, in our notions of male dominance – and in our psychology of marital sexuality, of reproductive rights and prerogatives – we, Muslim men *as well as Muslim women*, most often think *mahr* rather than *sadaaq*.

### **Later during Islamic history, the revolution against hetero-reality and patriarchy was stifled.**

*Sadaaq* began to be conceived once again as *mahr*: indeed in many ways, *sadaaq* reverted back to *mahr*. In popular language, *mahr* soon became the preferred term of use in referring to what was called *sadaaq* in the Qur'an. Minimum values were set for *sadaaq*<sup>74</sup>, and many other changes made.

The transformation of gender relations intended upon the advent of Islam had received a death-knell by the 4th century of Islam with the loss of juristic creativity in Islam. *Mahr* and *sadaaq* had by this time become synonymous words in the books of Islamic Law. *Sadaaq* had been stripped of its moral and sublime meanings and in the linguistic reversal from *sadaaq* back to *mahr*, the institution had become once again invested with traditional notions of bride-price – of *acquisition* and *possession*. By this time, all the major law books of Islam were technically defining *sadaaq* as *mahr*: that which a man gives to a woman at marriage ‘*in return for the man's right to have access to legitimate sexual intercourse with the woman in question*’: a dubious definition that held marriage to be simply a peculiar form of prostitution. This definition that made *sadaaq* equal to *mahr* in the law books of Islam was unchallenged for centuries, even though in direct contradiction to many verses of the Qur'an that portray sexual relations as mutual and symbiotic. That pervasive definition depicted women as having no sexual desires or needs of their own, in direct contradiction with the Qur'an and the teachings of Prophet Muhammad. A central element of hetero-reality after all, is the idea that women exist for the satisfaction of men's sexual needs. Today, sermons given at Islamic marriages, in admonishing the audience of Islam's position that legitimate sex is to be found only in marriage almost always deploy language that tie *mahr* to sexuality: *it is forbidden for a man to cohabit with a woman whose mahr he has not paid*.

In consciousness, in practice, in language, *mahr* is always pre-eminent. *Sadaaq* if mentioned at all is divested of its real meaning. The concepts of *truth*, *friendship*, *sincerity* and *promise* become only a subtext – edited out of consciousness, when not edited out of mention altogether. My wife and I are Muslim, and the personal too is political. At our marriage, she demanded as *sadaaq*, a pack of cassettes with the complete voice recording of the recitation of the Qur'an. The exchange of a pack of cassettes with a material worth of \$20 or less, for a bride with a law degree early this century fits no conception of bride-price. I find a basis for optimism: in a country where brides are still bought and sold<sup>75</sup> for tens of thousands of dollars as a cultural (though not

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division of labour. Arguing that the Islamic marriage ought to economically empower a Muslim wife, not constrain her; numerous authoritative theologians have ruled that a man has a duty to maintain his wife at the standard of living to which she was used before her marriage (Abd al 'Ati, 1982) p 56. Islam recognises women's domestic work as a productive activity to the extent that some theologians have argued on a woman's right to charge a fee for her domestic labour, including even the breast-feeding of an infant(!); or in the alternative, to insist that her husband employs paid labour, including a wet-nurse to breast-feed the infant whose feeding, shelter and clothing, Islam has named as *his* obligation, not hers.

<sup>72</sup> Theologians of Islam are unanimous that unless she's otherwise unfit, the mother keeps custody of the children upon divorce, while even then, the man is responsible for all their economic needs, and he must remunerate her for the care of the children (Abd al 'Ati, 1982) p 246.

<sup>73</sup> The Qur'an particularly prescribes such consultation in respect of breast-feeding.

<sup>74</sup> See note 61 above.

<sup>75</sup> See note 5.

religious) practice; innumerable others of my generation of Muslims, especially in South-western Nigeria, are reclaiming the true meanings *sadaaq*, free of the hegemonic implications of *mahr*.

## LANGUAGE AND KNOWLEDGE-SYSTEMS AS SITES OF OPPRESSION

It eventually becomes necessary for every form of hegemony to exercise power over ‘culture’ and knowledge. To paraphrase Edward Said, no colonisation of lands is possible – or sustainable – without a concurrent colonisation of the minds. Or in this case, the colonisation of women’s bodies; the imperative to always see marriage as a process of de-selfing, of self-abnegation for the woman, is only sustained by being sublimated into *culture* and the knowledge we circulate and transmit.

Knowledge has for ages been placed at the service of patriarchy.

New knowledge, new ideas – new, yet well rooted in the old – will also be needed in its deconstruction. The control of knowledge systems, of the processes involved in transmitting *traditions*, histories and ideologies; is central to maintaining patriarchy, so that at the end, women must cooperate in sustaining their own continued subjugation.

We focus on language because in many ways, language *is* culture: especially when culture operates as it often does, as the descriptions, communication and representations of the social world. Language is about *naming*, and as Mary Daly has shown, “to name is to create the world”<sup>76</sup>. Yet neither language nor culture is static. Liberation, whenever painted as an escape *from* culture, usually fails to occur: this being the unambiguous verdict of history.

Our conceptualisation of ‘culture’ must also include “a refining and elevating element, each society’s reservoir of the *best* that has ever been *known* or thought”<sup>77</sup>. Every struggle involves the *redefinition* of major terms, the *re-conceptualisation* of major reference points of our social world.

**We shall briefly outline how patriarchy operates within language as the means both of transmitting as well as presenting, representing, and re-presenting culture.**

The statement, ‘she married him when she was 22’ might raise no eyebrows today. But only a hundred years ago, such a statement would have been an absurdity. She *got married to him*...she *was wedded to him* when she was 22, would have been the proper thing to say. I use this both to illustrate the power of language, its non-neutrality, and its operation at the sub-conscious level for all users. This illustration also serves to underline the existence of possibilities for transformation – transformations that are usually possible over only three generations.

Just as above, the word for marriage in my native tongue, Yoruba (South-western Nigeria) is ‘*igbeyawo*’, literally, ‘the taking of a wife’. Of course, *not* ‘the taking of a husband’! Men marry. Women can only *get married*. This is probably true of the majority of human languages. It’s irrelevant whether every speaker of Yoruba is conscious of this or has ever paused to understand the full range of implications. Just one example may suffice. A man thought aloud; in justifying his rejection of a divorce sought by his wife unless he gave consent; “if women *do not* marry, and are only married, how can a woman divorce her husband? Surely it is up to him alone to *release* her”. A Yoruba Muslim or an Arab Muslim may thus find it difficult (and some actually do find it difficult) to conceptualise a woman’s right to divorce under Islam - even when faced with a husband’s intolerable cruelty.

Yet that idea may be easier to accept for another Muslim brought up in a matrilineal society. All of this may happen even though the three types of Muslims here illustratively mentioned may have the same Islamic understanding and may all accept - at least doctrinally - that Islam allows to women the right of divorce when

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<sup>76</sup> Mary Daly as cited in Bell and Klein (1996), p32

<sup>77</sup> (Said, 1993) *Culture and Imperialism*. Introduction p.xiii

marriage becomes untenable. This fact itself has to be reclaimed: Islam's (male) theologians have over history tended to narrow down a woman's right to only one form of divorce: *khul'e*<sup>78</sup>

In our treatment of *sadaaq* as a Qur'anic term meant to eliminate *mahr*: we have shown how *naming* is decisive in offering liberation and how subsequent re-naming re-established and has perpetuated oppression.

In Arabic, the word for bride-price not only denotes commercialisation, it also happens to be, as we have pointed out, a synonym for both the *bride-price* paid to *acquire* a wife **and** the *ransom* paid to *free* a slave. The implications, however subconscious, are very vast indeed. In my native tongue, bride-price is *owó-óri obinrin*. In Igbo language spoken in South-eastern Nigeria, bride-price is *ego-isi nwanyi*. Literally translated, both *owó-óri* and *ego-isi* mean the same thing: the "*cost (of a) woman's head*". It's irrelevant whether speakers of these languages resort to avoidance or denial, or whether they realize the subconscious power of *naming*.

**Language and knowledge systems are sites of oppression - a reality that every struggle for justice must eventually tackle.**

### ***IMPACT OF COLONIZATION AND NEO-IMPERIALISM ON ISLAMIC LAW AND SOCIETY***

Here, it is 'Muslim Women' rather than Muslim Society as a whole, that form the focus of our exploration of how Islamic law has coped with the impact of colonisation and neo-imperialism.

I suggest that in response to social processes over the past several decades, Islamic Jurisprudence has taken knee-jerk approaches, rather than the type of systematic comprehensive structural response that will be later discussed as being needed to deal with the lived realities of Muslims in the modern age.

Many have correctly observed that *preoccupation with women* is one of the most striking features of Islamist movements throughout the world today. Both in the Arab world and elsewhere, the rise of Islamism as a political ideology has featured at an unprecedented urgency and frequency, the need to define and re-define the place of women in society (Taraki, 1997). However, there is little sound analysis of why this is so. Such sound analyses that exist have accurately identified the historical process of colonization<sup>79</sup>. But most have failed to vigorously analyse the many new, continuing – indeed intensifying – forms of military, economic, political and cultural hegemony that today typify powerful states and powerful trans-national businesses and the way they deploy human rights and especially women's human rights arguments in the service of relentless imperialism.

The role of missionary Christianity in the service of past imperial colonization, especially in Africa, is central, inextricable<sup>80</sup>, and especially for non-Christian Africans, painful and unforgettable<sup>81</sup>. Colonising Europeans and Americans worked in concert with Christian missionaries almost everywhere. In every Muslim society that they penetrated, they often jointly defined their 'civilizing' mission as involving the liberation of women, and the reform of the sexual mores and family traditions of Muslims. This experience of hegemony was internalised over the past three generations. Leila Ahmed (1992) analyses Islamist positions on women as a manifestation of the historical conflict between the Christian 'West' and Islam. *Women* are the centrepiece of the Islamist agenda in part because colonisers and missionaries posed them as central in their colonial discursive assault on Muslim cultures. Ahmed thus sees the Islamist preoccupation with women as a struggle over culture: a discourse of resistance.

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<sup>78</sup> The claim of some secular feminists, and some Islamic theologians that Islam allows only *khul'e* (self-redemption) divorce to women is incorrect. Proper judicial processes within Islam allow a woman to initiate and see through her divorce process. It is in fact the duty of the proper authorities to free a woman from a marital bond that has become untenable, immaterial of the husband's consent to the divorce. Such grounds under Islam include, amongst others, mistreatment, desertion, impotence, and sterility (in the case of especially the last two, at the woman's discretion). It is patriarchal structures that close these channels to women.

<sup>79</sup> cf. Kandiyoti (1991); Ahmed (1992)

<sup>80</sup> See Mutua, Makau (1999) *Returning to My Roots: African Religions and the State*; Mutua, Makau (2002) *Human Rights, Religion and Proselytism*; Said, Edward (1978) *Orientalism*; Said, Edward (1993) *Culture and Imperialism*

<sup>81</sup> cf. Tukur, Mahmud (1999) *Leadership and Governance in Nigeria: The Relevance of Values*

Taraki (1997) further sees this preoccupation not only as a form of resistance but also as the ultimate historical revenge. The West's political, technological and economic superiority is currently overwhelming and undisputable. In the mind of some Islamists, Taraki argues, the price of that superiority has been the moral decay of Western society, usually symbolised in the popularised image of the liberated Euro-American woman, 'clad in scanty revealing clothes, spiteful of marriage and family and quick to give her body without resistance'. In Muslim societies where virtues of modesty and sexual restraint are very valuable, and where *morality* is more often narrowly construed as *sexual morality*, such sensationalised images resonate very loudly. In some way, suggests Taraki, the 'moral superiority of Muslims' restores a sense of dignity, and is at least a compensation for their continuing economic and political subjugation today.

Kandiyoti (1991) notes how the conflict between Islam on the one hand, and colonialism and missionary Christianity on the other created an area of cultural resistance around *women and the family*, which came to represent the inviolable repository of Muslim cultural identity. It is further suggested that the deployment of the language of cultural authenticity by Islamists is in addition a response to unstoppable changes in social relations regarding gender and class – changes of the past few decades only, a factor Kandiyoti suggests is distinct from the older issue of cultural resistance that emerged with colonization.

To all the above, I argue that two other dimensions are missing: (a) the *external* preoccupation (of the Other) with the 'status' of Muslim women and the frequent distortion of their struggles for substantive justice; and (b) the historical fact of the success of the colonial assault on Islamic systems and institutions in every sphere *except* the family – the last site of contest till direct colonization ended.

**(a)** While much has been written on the obsession of Islamists with the 'woman question', analyses are lacking to address the even larger Western obsession to ethnocentrically paint Muslim women on the whole as voiceless, lacking agency and autonomy, denied education<sup>82</sup>, subjugated in marriage, docile, helpless and miserably depressed – essentializing the overall racist narrative of Arabs and Muslims being barbaric and primitive, when not "medieval, fanatic, cruel and anti-woman"<sup>83</sup>. Nor are there sufficient analyses of how this feeds into the broader issue of imperialism, which always requires others to be painted as less than human and deserving conquest...indeed placing the *burden* and the *moral duty* of conquest on those powerful and "good" countries who are at war with "evil" in the world<sup>84</sup>. The *oppression of women* (and other human rights abuses) is always used by powerful states today to *morally*, if not legally justify imperialism, at least to their own internal populations.

Western intellectuals and media also often skew the actual praxis of resistance: Every Muslim woman struggling against patriarchy by showing the way sexists employ male-centric interpretations of Islam in the service of gender hegemony discovers she is quickly called a "Muslim feminist". Any woman struggling for justice for women must be *feminist*. This predilection of appropriating Muslim women's right to self-definition by usurping the power of *naming*<sup>85</sup> denies the autonomy, specificity and creativity of their struggle and thought, and panders to false, culturally imperialistic Huntingtonian assertions that there is no room from within Islam to contest inequality, women's oppression and social injustice. After puncturing many generalisations and simplifications on Women's status within organised religion, especially Islam, and warning that Western universalist frameworks tend to devalue and oust local ones and almost always backfire, Patricia Jeffery (1998) asks: "are Western feminisms another form of cultural imperialism?" The distortion of Muslim women's struggles for substantive justice was obvious very recently when innumerable print and electronic media in almost every Western country celebrated the return to the international pageant process after so many years, of a

<sup>82</sup> Until the obligatory *burqa* of women in Afghanistan of the Taliban, the *chador* of Iranian woman and the *abaya* of the Saudi Arabian woman essentialised the oppression of Muslim women. From 2000 till the present, it has become clear that women constantly constituted a 52 – 54% majority of higher-level postgraduate students taking Masters and Doctorate degrees in both Iran and Saudi Arabia. Since such facts do not fit the popular narrative, and since those figures surpass those of some 'more civilized' countries, they have rarely merited mention.

<sup>83</sup> (Said, 1993) *Culture and Imperialism*. In the Introduction

<sup>84</sup> George Bush II, as President of the United States, has taken the us-vs.-them, good-vs.-evil rhetoric to unprecedented levels. The dubious moralising of his administration has nonetheless been very successful in mobilising the US public in support of global US hegemony.

<sup>85</sup> See note 73 above.

‘Miss Afghanistan’, and declared in unison about this symbolising the ‘wind of change’ blowing across that country – and chorused how this was a sign of the Afghan Muslim woman’s liberation. Few things are more ludicrous to the average Muslim woman everywhere, than to represent her noble struggle against patriarchy, sexism and fanaticism through such caricatures that suggest that the objectification of women, their public sexualisation in male-centric spaces, structures and power relations, and their use in the marketing and advertising of a million commodities in some way could possibly symbolise *liberation*. Such Western ignorance of (and arrogance over) the values of others is widespread and typical. Some of the Islamists who then erroneously equate “liberation of women” with the ‘loss of values’, and resist it, do not act out a stand-alone initiative. Some (*not all*) are often only reacting to narratives that are dominant and almost universal<sup>86</sup>.

1. The unravelling of Islamic systems and structures of social organization began with commerce. Colonialists first replaced Muslim systems of commerce informed by the Shari’ah with western modes. As penetration and control progressed, Western systems of governance were introduced, and eventually the economic systems of Muslim societies were replaced by Western systems of economic organisation and interest banking. *Zakat* and other Muslim public dues soon gave way to Western forms of taxation. These changes were effected at every level in the public sphere. The arena of the private where women held fort became the last bastion of the struggle against imperialism. That any resurgence of the Islamic system beyond the private sphere should also start from this last line of defence does not appear unreasonable, nor is it surprising. Once again, as before, it is women who must be made to bear the brunt every time that ‘resistance’ inflicts its own hegemony. That it is so is unfortunate. Yet intolerable!

### **SHARI’AH: WAY-OF-LIFE, PROCESS OR STATIC LAW?**

It is common to find *Shari’ah* rendered as “Islamic Law”.

Islamic jurisprudence, the foundation for “Islamic Law”, is that complex system which especially more so in the past, functioned for Muslims as the arena in which the conditions, dynamics, and the meanings of the relationship between God and human beings were explored. The sources of Shari’ah bequeathed to Muslims by Prophet Muhammad himself<sup>87</sup> are the Qur’an, which all Muslims believe is revealed by God, and the hadeeth or sunnah<sup>88</sup>, the teachings and practices of the Prophet. While the Qur’an enjoys undisputed authority and authenticity, the majority of the reported hadeeth do not merit the status of ‘*saheeh*’ (authentic) by which the exact wordings of the reports can be incontrovertibly traced back to the Prophet himself. Many other secondary sources of Shari’ah were developed and have become absorbed during history, such as *ijma*’, *qiyaas* and ‘*urf*’.

Shari’ah, properly defined, is the body of “institutions, beliefs, worship practices, values and laws, that God has ordained in full or in essence to guide the individual in his relationship to God, his fellow Muslims, his fellow humans, and the rest of the universe; and to be the basis for the moral judgment of actions as good or bad”. Thus, Shari’ah is a total way of life, including but not limited to any of: Islamic rites of worship, Islamic laws, Islamic moral codes, etc. The secular-sacred dichotomy of Western thought and society, which comes from a peculiar historical relationship between religion and society, is not a heritage common to all other societies and does not apply to the reality that Muslims have always known for most of their 14 century history. Religion has always applied not only to the private and personal spheres, but have always powerfully influenced people’s practice of commerce and economics, their conception of good governance and society, as well as practically every other sphere of known public life. The popular Western translation of Shari’ah as Islamic Law is thus incorrect, inadequate and thoroughly misleading. Law, in post-Enlightenment Western thought, is *positive law*: the commands made by a sovereign, commands that are *enforceable by threat of sanction*. So much of Shari’ah operates at the arena of the personal conscience and can neither be enforced nor treated in a court. Only the

<sup>86</sup> In *Covering Islam: How the Media and the Experts Determine How We See the Rest of the World*, Edward Said (1996) explores the power of the Western media and its control over ideas, information and consciousness globally.

<sup>87</sup> A very well-known hadeeth renders: “I leave for you two things which if you follow, you will not go astray: the book of God (Qur’an) and my sunnah”

<sup>88</sup> Accurately, hadeeth refers to the *sayings* and teachings of the prophet, while sunnah refers to his ‘personal example’, which includes hadeeth as well as his practices and the practices of others which he approved of.

*public law of Shari'ah* (a small part of the totality of Shari'ah) has now come to be misconstrued as Shari'ah – by many Muslims as well as the overwhelming generality of non-Muslims.

Given the peculiar and often distorted coverage of Islam in the powerful (Western-controlled) international media, it is not surprising that when many people think of Shari'ah, they think of penalties such as amputations and stoning to death.

A second misconception – especially amongst Muslims – is to regard *fiqh*, the *human interpretation* of Shari'ah, as Shari'ah itself.

*Fiqh* (literally, intelligence or knowledge) stands for Islamic jurisprudence, the human systematic analytic effort that goes into understanding and applying the principles of Shari'ah.

It is the product of a long and complicated history that many Muslims, while continuing to recognize Shari'ah and *fiqh* as two distinct though related entities, have come to see *fiqh* as part of Shari'ah, or as *applied Shari'ah* – and some even seeing *fiqh* as directly synonymous to Shari'ah.

There are four schools of *fiqh* in Sunni Islam. But to believers, Shari'ah is one comprehensive system, divine in origin, religious in essence and moral in scope. *Fiqh* is socially grounded and interprets and applies Shari'ah both in terms of Shari'ah principles and in the light of the social, geographical and historical context. But as *fiqh* became increasingly seen as synonymous with Shari'ah, laws derived from the *fiqh* of a different historical context came to be seen as divinely binding on all the Muslims that came after.

Yet while Shari'ah is divine, *fiqh* is entirely human, and is therefore neither inerrant nor immutable.

A third misconception (amongst Muslims) deriving from the above is to see Shari'ah as “frozen” law, rather than as a process – which Shari'ah *was* in the centuries that followed Prophet Muhammad. Islamic law developed through a cumulative, evolutionary and often dialectic process. This process was a comprehensive epistemology with its own structure and methodology. An important component of this process was *ijtihad*, literally *toiling* or *effort*, and technically meaning *independent disciplined reasoning to derive the will of God on a contemporary matter in a prevailing circumstance by applying Shari'ah principles*. This process, for the most part, is now dead<sup>89</sup>. Islamic law has been reduced to a set of commandments or rules (*ahkaam*). Contemporary applications of Shari'ah treat Islamic law as settled, constant and closed. There have been calls for rekindling the process of *ijtihad*, but these calls have only led to the production of new rules, without a reinvigoration of the actual epistemology. Rules, old or new, do not make a legal system. Thus what we have as “Islamic Law” today, is in many ways dysfunctional as a system – stripped of the dynamism that was its strength in ages gone by.

The crisis unleashed by these entrenched misconceptions amongst Muslims, and the situation it creates, lies at the bottom of the problems facing Muslims in relation to the application of Shari'ah in the modern world today<sup>90</sup>.

The effects of this crisis, and the implications of the underlying premises appear to impact first and worst on women. Today, they are evident everywhere: from the obligatory veiling of women's faces and the prohibition of women from driving in Saudi Arabia to various official and non-formal restrictions on women's employment outside the home everywhere else.

A significant part of contemporary “Islamic Law” *on the issue of women* is mere “Muslim Laws” (plural in origin and structure) *made by men*; rather than pre-ordained by God<sup>91</sup>. Deconstructing and unreading every interpretation of Islam that has been placed in the service of patriarchal values, practices and institutions, is a major component of the larger rethinking process that challenges Muslims today.

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<sup>89</sup> Many leading scholars of Islam today have reached these same conclusions: See Wael Hallaq (2001) *Authority, Continuity and Change in Islamic Law* at p.126 and Khaled Abou El Fadl (2001) *Speaking in God's Name: Islamic Law Authority and Women* p.171.

<sup>90</sup> cf. (Abou El Fadl, 2001)

<sup>91</sup> Shaheed (1998)

## PRESENT CHALLENGES AND FUTURE IMPERATIVES

**In the face of the monumental challenges entailed in the reform of Islamic Law and the rethinking and reinvigorating of the epistemology upon which current Muslim conceptions of Islamic Law are constructed, many thinkers, especially non-believers within the fields of development and human rights do often question, why engage religion at all in efforts to advance human rights?**

Firstly, a sincere commitment to finding solutions to human problems must compel the realisation that *values* steer lives and social institutions; that Religion is one of the major sources from which most people draw values and moral inspiration; that religious values can serve as anchors in a turbulent rapidly-changing world; and that where there is the will, values can be used to mobilize people against most of the difficult and sometimes intractable social problems facing Society.

During the first seven decades of the 20th century, few theories on social development enjoyed more credence worldwide than the notion that modernisation will inevitably bring about secularisation (Haynes, 1995; Sahliyah, 1990). This theory has since been totally invalidated by the increasing social role of Religion in practically every human society. The idea that nations would inevitably secularise as they modernised arose within a context where urbanisation, industrialisation and especially scientific and technological progress were seen as bound to trigger a rationalisation of “non-rational” views – including religious beliefs. The unending wave of technological advancements that began after World War II was supposed to lead to overall long-term Human Progress, which would end the perennial social problems of Poverty, Hunger, Injustice, Disease and Environmental Degradation. These age-long problems persist, and in many cases are now worsening with Globalisation. Many aspects of Modernisation (including technological developments) have left many people with a feeling of loss rather than achievement. Western modernisation has undermined value systems, weakened and sometimes ousted “stable” local traditions, while technological advancement has allocated opportunities in highly unequal ways, *within* and *amongst* nations. Western modernisation gave rise to a global consumerist culture that revealed (and with increasing Globalisation, has amplified) the relative deprivation of peoples. Western modernisation has produced in non-western societies, a deep sense of alienation and stimulated a search for an identity that would give life some meaning and purpose. It so happens that the “meaning and purpose” of life is a central discourse of all Religions. In “Public Religions in the Modern World”, José Casanova (1994) grounds the global rise of Religion in sound sociological theory.

This trend influences Muslims everywhere – majority populations in well over fifty African and Asian countries, and significant minorities almost everywhere else. Many Muslims today inevitably see in religion a shelter against the failures of the secular state. In Muslim societies, any serious engagement of human rights in general and the status of women in particular must engage religion.

Secondly, the need to engage religion in human rights discourse in Muslim societies derives from Muslim consciousness itself about the central role of religion in Society. The notion of *religion* is uniquely Western. Muslims have always understood *deen*, the approximate Islamic term, to be more than *religion* and it will remain always difficult, as we have partly shown, to unpack Islamic cosmology and separate the ‘religious’ aspects from the social and the moral. The *deen* is the ‘*way of life*’ of Muslims. Shari’ah codifies that way of life. Thus, Shari’ah exerts totalizing effects on the lives of Muslims. Religion for most Muslims suffuses every facet of life and no system of rights that ignores this fundamental axiom is worthy of adoption or enforcement (An-Na’im, 1996). As long as the human rights paradigm is presented as a Western, liberal agenda focusing primarily on civil and political rights, people in Muslim societies remain profoundly distrustful, given the colonial past and the postcolonial relationship with the West and given many Western countries’ inconsistent respect for human rights, as shown in willingness to trade human rights for other interests whenever it's expedient to do so. Learned voices worldwide increasingly admit that the only legitimate and sustainable discourse that will change attitudes is an internal discourse within Islam itself.

Most importantly, the Muslim world faces the monumental and urgent challenge of rekindling Shari'ah *as a process*; more than a set of static *ahkaam* (rules) – a process that is truer to the Sharia's claim of being a way-of-life for all Muslims, and for all time. The authoritarian discourses that currently dominate Islamic jurisprudence and prevent its re-emergence as an epistemology and a methodology of enquiry must be and will be defeated. Only if and when this is achieved will the viability and dynamism of Islamic Law in the modern world be reclaimed. The particular effect of patriarchal readings of Islam on the status and well being of women in many parts of the Muslim world today run against Qur'anic morality.

Yet, it is not accurate to say that these interpretations do not sometimes justify themselves from Islamic sources such as hadeeth and various forms of *ijma* (historic juristic consensus of Islamic theologian-scholars) developed over the centuries. Rather, it is being argued that such interpretations always run contrary to moral principles of the Qur'an itself; *and* that there are always so many other Islamic sources, *also* from the hadeeth and the *ijma* that challenge such interpretations, often more than, or at least as much as those that lend them support. That over the course of time, such positive interpretations were de-emphasized in favour of hegemonic and authoritarian interpretations is peculiar, historical, environmentally contextual and unfortunate – and yet, very importantly, reversible.

The powerful egalitarian and social justice narrative of the Qur'an that created and transformed cultures and societies in the first four centuries after Prophet Muhammad was soon overtaken and stifled by the patriarchal cultural narratives that were so pervasive in the Arab culture which was then *the medium* for transmitting Islam (and its culture, language, beliefs and norms). The new Islamic culture was steadily arabised.

As Arab Muslims (now a steadily shrinking 18% of all Muslims) continue to represent smaller and smaller fractions of the Muslim peoples, there are already abundant signs that this historical process is being reversed. Arab culture is fast losing its power to represent Islam as *the* archetype. Arab scholars no longer hold unquestionable interpretive authority. People influenced by their own different cultural heritages increasingly emphasise alternative equally valid interpretations of Islamic sources that over history had become relegated and de-emphasised. Today, it is very common to find most non-Arab Muslims being perceptibly emphatic whenever pointing out that dominant Arab behaviour on a particular subject should not necessarily be read as Muslim behaviour.

Even though Islam, unlike other major religions, is categorical in negating a formal clergy or priesthood, historical developments have led to the current situation whereby Muslim society has its sacred and textual authority vested in *mullahs*, *sheikhs*, and *mawlaanas* – and even '*saints*' and *aayaatullaahs* in the case of Sufis and Shiites.

As Islam's official clergies issue more and more bewildering and shameless *fatawa* (plural of *fatwa*) in the service of hegemony and oppression; awareness is building amongst Muslims everywhere. And Muslims are increasingly conscious of the vast differences between Islam and its contemporary interpreters, and now seek wider varieties of theological opinions from a diverse array of theologians, jurists and scholars, at a rate not seen since a thousand years ago. The globalisation of information (with the Internet being central) is proving a phenomenal platform. Daily large increases in Muslim populations; heightened Islamic awareness and relentless Islamic resurgence are all proceeding very rapidly on a global scale. Yet they are occurring with a concurrent de-centralization of interpretive authority: an unusual blend that more learned observers increasingly recognise as having far-reaching future implications for the world of Islam.

## CONCLUSION

Although this paper has been about much else, I have centrally attempted an interrogation of Muslim marriage. Using *sadaaq* and *mahr*, I have shown the existence of stark differences between the Islamic marriage on the one hand, and the Muslim marriage that most of those who profess Islam practice on the other. The same could be done using divorce (*talaaq*) or inheritance – or any other issue on a long list of institutions that have a telling effect on the status, health and well being of over 600 million Muslim women.

I have raised several questions:

Why is *sadaaq* almost edited out of Muslim language and consciousness, replaced by *mahr*, when the Qur'anic verse that establishes the institution calls it *sadaaq*?



How did it come to be that *mahr*, the money paid to acquire a bride or ransom a slave, is today synonymous with *sadaaq*, a word that means truth and sincerity, friendship and promise?

Why do Muslims always tie *mahr* to sexuality in direct contradiction to the text and intent of the Qur'an?

When early Muslims often recognized *sadaaq* of no material value as being totally valid, why do today's Muslims have a fixed minimum material value for *mahr*?

In short, why do Muslims think and practice *mahr* when Islam prescribes *sadaaq*?

Why does such an aberration exist?

**I have suggested why such an aberration exists, identifying *hetero-reality* and *patriarchy* as fundamental.**

I have also shown why analyses that call upon Muslims to simply '*return to the true Islam*' are simplistic and naïve. I have located the reversal of *sadaaq* back to *mahr*, within the broader issue of the loss of juristic creativity that stripped Shari'ah of its processual features and led to the death of the comprehensive epistemology, structure and methodology pivotal to understanding Islam – a phenomenon popularly known as 'the closure of the door to *ijtihad*'. I have shown how this process stifled the revolution against hetero-reality that Islam brought about in 7th century Arabia.

I have shown how language and knowledge-systems have been key sites for maintaining hegemony against women.

**Yet unlike others, I have argued that apart from these 'internal' problems, other external imperatives exist that impose on Muslim women a stark choice between Islam and liberty, *but not both*. I argue that this poses a serious problem in the contemporary, and ought to be seen as negative and destructive – no less chauvinistic than any other form of hegemony.**

By insisting on secularism at all costs; by always rejecting the equal validity of faith values to their adherents in comparison with other secular-based convictual narratives; by always perceiving religious faith as inevitably a threat to liberty rather than being part of what liberty is about; such analyses imply that Muslim women are ignorant of the real source of their oppression, which must always be Islam. For those Muslim women who courageously choose to struggle against patriarchy *using Islam* and working from within Islam; such analyses represent a discursive assault that denies the specificity, creativity, autonomy and even validity of their struggle and noble thought. Such analyses serve only to promote false, culturally imperialistic assertions that there is no room from within Islam to contest inequality, women's oppression and social injustice. At bottom, imperatives such as those affirmed by Turkey – and more recently, France – against Muslim women who have chosen to wear the *hijab*, only sustain the myth that there is such a thing as a neutral public space<sup>92</sup>. As a Muslim who has many times staked my personal safety in speaking publicly against those who seek to enforce veiling of women as obligatory in the name of Islam, I find to be dangerous and untenable, both the *arrogance* inherent in the idea that a Muslim woman *cannot* choose the *hijab*, as well as the *ignorance* inherent in the claim that Muslim women *never* choose the *hijab*<sup>93</sup>. As a human rights activist, and as a human being, I find it a gross

<sup>92</sup> Dr. Rowan Williams, archbishop and head of the worldwide Anglican Church, in faulting the decision of the French government, identified the falsity of the claim of a *neutral public space in a secular society* (Christmas Message 2003). In societies where high-carat gold tongue-rings; jaw-dropping aggressively-extensive body tattoos; bogus male ear-rings and sundry other body piercing; out-of-the-world hairdos; smooching gay couples; cleavage-dropping necklines; black Matrix trench-coats; and thigh-high leather boots topped by only panties in freezing weather...in societies where all these images compete together in the public space with their dizzying array of political and other messages; it is gross prejudice and intolerance of the most shameless type to ban Muslim women from wearing the *hijab*.

<sup>93</sup> I find it particularly disturbing that my many friends and family members, including medical doctors, lawyers and PhD candidates who have chosen the *hijab* as a fundamental part of their personhood cannot live free in some modern, 'civilised' countries today. It is social violence to focus on the millions of women forced by states and other power structures to wear the *hijab*, and deny the existence and autonomy of many more millions of Muslim women – rich and poor, educated as well as illiterate – who *choose* the *hijab*, either because they believe God commands it; or because it gives them cultural or political identity; or because they feel more comfortable so clothed; or because they think it protects them against unwarranted sexual harassment; or even for some other non-definable reason. I have known many women who discard the *hijab* the moment they get out of their communities, and have seen women resentfully throw off their *hijab* on stepping on planes out of countries where the *hijab* is imposed. Yet I know countless well-educated women, and have lived with and personally interacted with thousands of Muslim women in my adult life, who have chosen the *hijab* where it is scarcely an encouraged practice: women for whom the thought of being forced to walk the streets without their *hijab* presents a terrible assault of their sense of dignity as human persons. To be aware of only one of these two realities is to be thoroughly ignorant of a mainstream global phenomenon. To emphasize one reality and obfuscate the other reality is to be complicit in a bigoted ethnocentrism that derives from the worst forms of intolerance and prejudice.

negation of human rights borne out of prejudice and xenophobia<sup>94</sup>, that the need to protect Muslim women from wearing “a symbol of oppression” be ever cited as a basis for denying to Muslim women their fundamental right to choose...their basic agency and their inalienable autonomy as human persons with inherent dignity<sup>95</sup>. That a modern ‘civilized’ country is now joining in such charade is a lamentably hypocritical development that once again shows Western liberalism’s blindness to its own many aggressions - economic, military as well as cultural<sup>96</sup>.

If any Muslim man anywhere believes his wife and her children are his *possessions*, to *use*, misuse and abuse as he wishes, it is often to the *mahr* he paid in exchange for his wife that he will point. If any Muslim father withdraws his ten year-old daughter from school to be ‘married’ into sexual slavery and paedophilia, his wish to appropriate the *mahr* is likely implicated. If a Muslim man points to any justification for inflicting violence upon his wife for refusing sex, as every *normal* wife must sometimes do, the *mahr* that he paid for the right to unlimited sexual intercourse with his wife is likely to be the rationale. Countless women are trapped in thoroughly abusive relationships because they cannot afford a pay-back of the bride-price or part of it, and these include Muslim women in those societies where the woman’s right to divorce has been narrowed down to only *khul’e*, self-redemption by payback of the *mahr*. These are only representative of countless forms of physical and psychological violence against women in which bride-price is implicated. Beyond all these is the psychic and spiritual consequence of the de-selfing and the self-abnegation that comes about from the feeling of being commoditized; the feeling of *belonging to* someone else. Most human females have at one time or the other experienced the effect on self-esteem and self-worth; but because the experiential is unsurpassable, few men have imaginations capable of encompassing a most widespread state of being.

All struggles that have ever been successful were won when a critical mass of actors belonging to the ‘oppressor-classes’ recognized the validity of those struggles and joined in fighting hegemonies from which they themselves hitherto benefited – and this has been the unambiguous verdict of history<sup>97</sup>. The dominant feminist notion that *all men enjoy the privileges of power and rather than be part of any struggle that leads to their own emasculation, will do everything to maintain the patriarchal system*<sup>98</sup>, is, speaking from my own convictions, false by generalization. A significant number of Muslim men are now part of this struggle. As a male Muslim, I am aware both of the power of that struggle and the wisdom of its actors. I also realize that men too are victims of patriarchy even though in much lesser ways; not just of the corrupting effects of male power, privilege and dominance over women, but also of countless other losses – material as well as emotional – not to mention opportunities forgone, that patriarchy inflicts. Foucault showed after all how power must always enslave those who wield it.

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<sup>94</sup> A secular Western liberal who has for so long been regarded as a ‘human rights advocate’ declared the Muslim headscarf to be oppressive not only to the wearer, but aggressive to every ‘civilized’ onlooker! Another well-known figure asked why so much fuss was being made over ‘a mere piece of cloth’; a racist remark that tellingly revealed fundamentalist secularism to be as dangerous as the ideologies it opposes. I have always argued that multiculturalism and democratic pluralism (rather than secularism) must be the will of the modern nation-state in a globalizing world where populations must become inevitably much more heterogeneous. The human rights of minorities have a chance for better protection by the state in *multicultural* United Kingdom or Canada than they possibly can have in *secular* France or in Turkey – where religion is held in contempt by apparatuses of the state.

<sup>95</sup> Some days after the French President’s speech about the need to ban the *hijab* from public offices, my wife, whose first degree is in law, and who chose the *hijab* before I met her, asked at a public gathering in Nigeria why anyone should care if she wears a piece of cloth on her head – whether it’s a do-rag or a bandanna – when it in no ways affects anyone else. She, like countless millions of other Muslim women around the world, finds the answers and excuses offered so far, to be either illogical or dubious, when not both.

<sup>96</sup> At the heart of Western liberalism is a profound certainty of itself and of its own superiority – a kind of certainty that always leads to a dangerous closure of the imagination; a limit to its understanding of whatever is profoundly different from itself – such as Islam. Western liberalism’s impoverished imaginative resources are self-evident in the way it always regards religious faith as irrational and emotional, and as something that *must* be corralled into safe irrelevance. Now that this cannot be achieved by discourse alone, liberal secularism must seize the powers of the state to maintain hegemony, and while identifying assertive manifestations of religion as dangerous, secular liberalism remains blind to its own forms of self-assertion and aggression (economic, military and cultural), and hence remains unaware of its own part in the generation of those ghastly phenomena it constantly wars against.

<sup>97</sup> A study of the lives of major actors and leaders of successful revolutions over the past six centuries reveals this. Revolutions against the rich by the ‘poor masses’ are rarely, if ever led by the poor. It is more common to find most key actors coming from amongst the middle and the rich classes. Those who are familiar with Islamic history will likewise remember how decisive was the conversion of certain ‘important’ personalities into Islam and how this changed the power equations so abruptly in favour of the early Muslim community which initially was largely made up of the poor, the dispossessed, the wretched and the oppressed.

<sup>98</sup> This line has stayed in my memory since I first read it years ago from a major feminist work. I have not been able to remember which text it is, nor have I been successful in locating the source.

It isn't simply because I have a mother, a sister, a wife and a daughter. It's also because I am Muslim.

As a Muslim, I recognize solidarity with the *majority* half of Muslims as a spiritual obligation upon me. It is these several hundred million persons, my sisters in the faith, whose bodily integrity is always at stake; whose labour is if valued, rarely compensated; whose toil in the procreation and reproduction of the species and the *ummah* is not regarded as 'productive' activity; whose very humanity is questioned in practices such as 'honour killings' and sexual slavery – practices for which actors sometimes bizarrely make the claim of acting in the name of Islam...

The Muslim woman's toil is made harder because she must confront 'internal' patriarchies and 'external' chauvinisms that appropriate her distinct and unique struggle. Yet, it is a struggle to be won, because it is a struggle about justice, the central theme of the Qur'an itself whenever it addresses 'the things of this world'. It is a struggle with which one expresses solidarity – doing so with sensitivity and with respect for human dignity. Always.

Hetero-reality and patriarchy have until now, made the task well nigh impossible. But it is a task that is now both possible and inevitable. Maintaining such optimism requires the capacity for imaginations of multiple unprecedented alternatives. To fail to do so is to accept defeat, and forsake a uniquely valid struggle.

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## **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 girls 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 BEWTWEEN 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-bride 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.

## **BRIDE PRICE AND FIGHT AGAINST HIV/AIDS**

**Presented By Magdalene Bukya Bubi Chairperson Iganga Women's Group**

### **INTRODUCTION:**

Dowry payment is still upheld by most tribes in Uganda including some parts of Busoga e.g. in Busiki and Bulamogi Counties and some sections of Bugiri District. Dowry subjects girls to early marriages as parents wish to get wealth and this expose men and women to the risk of getting infected with HIV.

#### **Definitions:**

Bride price. This money or property, which is given to a woman's family by the man before marriage.

### **REPERCUSSION OF BRIDE PRICE IN RELATION TO HIV/AIDS**

#### **Early Marriages:**

In most of the societies, parents believe that the girl child is a source of wealth therefore, the girls are given away to rich men who can afford to pay bride price despite the presence of the HIV/AIDS scourge.

Because of the dowry, which has been paid, the girl cannot decide on her own, she has to abide by the culture and this forces her to marry without considering their sero-status. This is one of the major obstacles in fighting the HIV/AIDS pandemic.

Early marriage means early involvement in sexual intercourse. The vaginal lining in a young girl is still thin and therefore prone to trauma during sex which makes the young girl more prone to HIV.

#### **Lack of decision making powers:**

Because dowry has been paid, the girl is considered as man's property therefore she cannot make decisions on her own. This keeps her under constant fear and tied to a martial home despite knowing her husband's sexual malpractices such as having extra marital relationships which exposes her to HIV infection.

#### **Inheritance:**

Because of the bride price which was paid, when the husband dies, one of the brothers takes over the widow so that she does not marry outside the family. This is in most cases done without considering the cause of death hence may lead to any of the two getting infected with HIV.

In case the woman dies, another girl from the deceased's family or clan is demanded in replacement for her sister or relative, this also poses a danger of HIV infection.

### **EDUCATION AND BRIDE PRICE**

Because parents want bride price, they terminate the girls' education as the girls are married off to get the wealth as a result most women cannot read and personalise the message about HIV/AIDS hence the vulnerability of women to HIV infection.

In some societies, it is believed that the payment of bride price in marriage prevents a woman from having extra marital relationships and divorcing as such it prevents spread of HIV infection.

Basing on the above, unless the tradition of paying bride price is earnestly analysed and revised the fight against HIV in the societies with that practice will bear little fruit.

### **Bride price and the improvement of sexual and reproductive health and rights**

#### **Definitions:**

Reproductive Health: This is the state of complete physical, mental and social well being of an individual and not merely absence of disease or infirmity in relation to the reproductive system, its functions and processes (By World Health Organisation). It includes sexual health, enhancement of life and personal relations and care related to reproduction and sexually transmitted diseases.

#### **Bride price and sexual rights:**

Because a woman is seen as property, which has been bought, she has no right to decide when to have sex but has to satisfy her husband at all costs.

#### **Bride Price and Number of children:**

The woman's place in a home is secured by the number of children she produces as decided by the husband because of the bride price he paid to her parents. This puts the woman in danger of carrying risky pregnancy.

#### **Bride price and resource in a home:**

Because the woman was bought she does not own resources in a home and she may not be able to access reproductive health services. She therefore, has to wait for the husband to facilitate her for example in terms of transport.

## **Bride Price: The case for Malawi**

**By Mrs. Emmie Chanika, Civil Liberties Committee -Malawi**

*A Daughter for Loan* was the award-winning article in the 2002 MISA competition that earned one of the local journalists' recognition for his ability to use the pen to highlight the rights of women/daughters. The article titled "A daughter for loan " gives insights on the extent of Bride Price in Malawi.

Malawi is one of the African countries that some people stick to cultural norms and what they think are values as far as marriage practices are concerned. Patrilineal and Matrilineal are the two systems that tribes across the country practice. It is the patrilineal system that pays much emphasis on the importance of paying a Bride Price or *Lobola*. Patrilineal societies cannot even allow their daughters to get married without the man/suitor paying something in exchange. The practice is common in almost all the tribes in the Northern Region of Malawi. In Karonga district for example, *Nyakyusa* tradition provides a practice that if a family is poor and low in status, it can go to a rich man to ask for loan of a cow or money in exchange for their daughter. This practice is called *Kupimbira*. A girl child is therefore used as surety. This tradition does not recognize the rights of daughters until she turns into adulthood. Such a daughter is therefore at a mercy of a rich man who can decide to sleep with her at any point in her life as long as the loan is still outstanding. In most cases such a loan is not paid back with economic status of Malawi.

On the other hand, Christianity brought some relief so that the normal bride price for some good families has been reduced to a token fee of cattle heads. However, it is also within the same that some abuse of the Human Rights is done when divorces turn nasty.

The main cause of bride price is poverty. Daughters are a symbol of wealth in most patrilineal societies and sons are viewed as people who own and spend the wealth of a family.

*Kuhaha / Kuhala or Chokolo* wife inheritance is another practice common in patrilineal society. It is viewed that because a man paid bride price to have the wife, the woman remains the property of the husband's family relations even in the event of death. It is therefore made sure that another suitor is identified among the husband's family relations to take over the property of the deceased including the wife. This, though done as a way of protecting the family, takes away the freedoms and rights that women must enjoy. Culture here is used as a justification tool to oppress the plight of women.

In other areas, for example Nsanje District, widows are only released after they are cleansed as they are regarded as dirty when the husband dies. However, when the wife dies, the husband does not go through the ritual of cleansing. The cleansing ritual demands that the woman sleeps with another man to cast away evil spirits. We are trying to get funding for a major campaign for the 8th march International day of Women/ 16 Days of Activism.

With the situation of HIV/AIDS in Africa and Malawi in particular, these practices contribute a lot to the spread of the virus. Women therefore continue to suffer in silence in the name of culture.

## **COALITION AND ACTION TO SAFEGUARD THE CHILD AND THE FAMILY**

**By: Alice Dokoria**

Marriage is the unity of man and woman which is highly recommended by God in Genesis 2:24 “That is why a man leaves his father mother and in united with his wife and they became one”. That means that the coupled has joined an institution of marriage of two complete strangers.

### **Gender Violence:**

In the marriage institution gender violence is caused by Bride Price. Bride Price is what the man pays to the parents of the bride before the lady is given out to him. The couple begins experiencing bitterness, aggressiveness, anger, temper and bullying in the family.

It is natural to disagree with people you interact with (at times) but bride price makes the violence very frequent. The tendency of parents sitting around a table and deciding on how much a boy should pay as Bride price should be stopped. Bride price is a degrading practice and takes us back to the slave trade era. It makes parents of the boy to exploit the parents of the girl. A wife is taken for granted as property because it was bargained and a compromise reached, bride price paid and an agreement signed by the two parties

Family relationships can improve if bride price is abolished. Marriage will be based on organic love not on material gains each person will have to sow love in the marriage institution since no one has exploited the other.

Men who treat their wives as their properties will replace violence with empathy. Discarding bride price will bring harmony in homes. Parents will not point fingers at each other, issues will be discussed and the whole family will be happy and confident.

Since Bride price incites violence in a family, there will not be happiness as in II Samuel 3:13-14. That aggressive authority that a man uses like David did will stop according to God’s words in:-

Genesis 31:14-15 Rachael and Leah complained about their father Laban for having sold them (Bride Price)

2<sup>nd</sup> Samuel 3:13-14 David with bitterness and aggressiveness claims back his wife Mikali (Michael) for he had bought her with 100 of the Philistines foreskins.

In Deuteronomy 22:28-29 Exodus 22:6-17 spells out punishment for a man who commits defilement or rape (violence of the girls virginity).

For a better relationship the marriage institution should be entered into with gifts rather than bride price whereby bargaining and agreement signing is out.

### **♦ Participation of the youth.**

Youths are the future leaders. The elders have to see to it that they grow up well. The earlier bride price is discarded the better for they will learn that women are not to be taken as a property. They will stop involving themselves with losers’ pretences for the sake of material gains so as to take wealth to the girls parents.

Many youth have had many different problems because of bride price like

- (a) HIV infection because of looking for wealth.
- (b) Conception at an early age and no way of maintaining the child – comes out as a street child.
- (c) Death when delivering

And the youth before deciding on marriage should bear in mind that a woman is a helper so before marriage should base their relationship on organic love. Not materials or witchcraft love. They should not put emphasis on wealth but on quality. They should know that this marriage institution is not a bed of roses all the time. They should expect ups and downs and know that in marriage one has got to work 24hrs.

## **INTERNATIONAL CONFERENCE ON BRIDE PRICE AND DEVELOPMENT MAKERERE UNIVERSITY, KAMPALA UGANDA**

**By Fr. Deo Eriot**

### **1. RELIGIOUS AND CULTURAL PERSPECTIVES ON BRIDE PRICE**

The term bride price does not exist in major English Dictionaries like Oxford Advanced Learners Dictionary, The Concise Oxford Dictionary of current English, Webster's New World Dictionary and others. This is as curious as it can get. Instead, the term dowry, exists and has various meanings. The Bahai most Holy Book (P. 208) explains that the institution of dowry is a very ancient practice in many cultures and takes many forms. In some countries it is a payment made by the parents of the bride to the bridegroom (as in India); In others (as in the African continent, and Uganda in particular) it is a payment made by the bridegroom to the parents of the bride called a 'bride price'. In both cases the amount is often quite considerable.

The Bible has episodic stories about payment of bride price. Jacob worked 7 years for Leah, and another 7 years for Rachel (cf G. 26:16-33:7 ). Imagine 7 years' wages to afford a wife! The Old Testament defines bride price as 'Mohar' money paid to the parents of the girls as compensation. The minimum amount of money was 50 silver pieces, but could be more depending on the wealth of the husband's family.

Hinduism put 'dowry' as the necessary requirement for marriage to occur. African Traditional Religions has the requirement of bride price for marriage to be ratified. In Islam the groom is expected to give 'Mahr' a marriage gift to the bride. What we notice is that the major religions in our continent recognised the practice of bride price. In each case it was a payment of considerable value to the parents of the girl as either compensation, or a gift of appreciation or simply, a fine.

### **2. BRIDE PRICE ABUSED**

All cultures that have entrenched the practice of bride price have abused its social value, for economic gains or otherwise. The biblical Laban father of Leah and Rachel, the father-in-law of Jacob, abused bride price for cultural reasons. Seven years' wages is an exorbitant amount to pay for one's bride. Laban made Jacob work for 14 years to acquire Rachael the woman of his love (Gen. 29). According to Sudheer (internet) 'dowry' among the Indians continues to be given and taken. A number of marriage negotiations break down if there is no consensus between the bride's and the groom's family. Dowry deaths of the newly married bride are very common in the news. In Africa and Uganda in particular 'bride price' has led some, to criminal acts like thefts, embezzlement, cattle rustling or raiding to meet the required cost or charge for the bride. Because of the economic surplus involved, traditional marriages have remained the preserve of the elders who have perpetuated 'arranged marriages' for their daughters.

### **3. RIGHTS OF THE BRIDE PRICE**

The African bride is between a rock and a hard place. The cultural system disenfranchises and denudes her of her basic freedoms as we know this under the 1948 Declarations of Universal Human Rights. Because of bride price parents are keen to 'arrange' a marriage for their daughter. In effect, an arranged marriage may not be in the interest of love, but money. It is again money which is not given to the bride but the parents. On the other hand, settlement of bride price in fact transfers the rights of the bride over her own destiny into the hands of her

husband who has paid for her. Henceforth, the husband has all the authority over her. For these reasons many African brides end up in abusive marital relations.

#### **4. RELIGIONS AND REFORM OF THE CULTURAL PRACTICE OF BRIDE PRICE**

Religions in every epoch attempt to influence the cultural practices of its people, especially when the culture is divergent on religiously acceptable values. It should be said that bride price as a cultural practice is a die-hard. Bride price is but the tip of the proverbial iceberg of our African culture. A long and hard look reveals that bride price is a resultant or the product of die-hard cultural and economic forces that produces it. Such forces are the African rural economy, legal systems, cultural beliefs, social fashions and trends, economy, politics, forms of education and others. Therefore, to reform bride price means that we have to be prepared to reform the ingredients that produce it as well.

The Christian and Islamic faith should have been best suited to be the women's rights ombudsman in the nearly 150 years of their presence here, but like the colonial administration before them it became expedient to assign traditional marriage and its baggage of bride price under the jurisdiction of customary law. There was therefore a peaceful partnership, if not co-existence between religions and customary law, with the former pre-empting the latter only when it best suited them.

Nevertheless religions have to a large extent been concerned about bride price, and the attendant human rights abuses. The Christian Churches have always used the power of the pulpit to attempt behavioural change of their followers. That is how far they got. Islam emphasizes that the so-called bride price is but a marriage gift given by the bridegroom to the bride on marriage and not to the relatives of the bride. Moreover the bride is given the privilege to determine her own bride price. Here Islam is peculiarly different from all other religions (cf. Qur'an 4:4 ; 4:25; 2:236). In Uganda however, Muslim parents demand bride price anyway, as compensation. The Bahai faith, aware of the burden of bride price to the groom and mentality of buying and selling of the bride, legislated, abolishing such excesses and converting the bride price into a symbolic act, whereby the groom presents a gift of a certain limited value to the bride. That's what perhaps the rest of the religions should copy from the Bahai example.

In 2001 research done in Kampala (Uganda) randomly sampled 300 followers of different faiths and asked them, whether or not religions should determined bride price? Eighty-six percent of the respondents answered 'Yes'; fourteen percent of the respondents answered 'No'. The same respondents were asked: Whether or not to abolish bride price? Eighty eight percent of the respondents answered 'No' rather, it should be reformed; Twelve percent of the respondents answered 'Yes, since it is unfair to women. Therefore, religions overwhelmingly want radical reforms of the custom hither to known as bride price, but keep it symbolic for its social value.

#### **5. SHARED AGENDA AND GOALS**

Apportioning blame does not serve the interest of the restoration of women's rights nor does claiming all the credit. We all slept while our mothers and sisters suffered injustices. Now the African civilization is reawakening and clearly focusing on women's rights. In Uganda Human Rights activism is in its second decade.

In the year 2000, there was a conference of catholic Christians of the eastern part of this country organised by the Archdiocese of Tororo, to address the burden of money and bride price. "The members felt that the issue of bride price affects marriage detrimentally. They suggested that parents should be educated to the fact that their daughters are not articles for sale and that bride price is not essential for marriage. While respecting the tradition of dowry, the church encourages parents to be moderate and view it as a gift, rather than a payment. It should never be an impediment to a valid marriage" (i.e. church marriage). Isn't this what our legislators are debating in the Domestic Relations Bill (DRB)? " The DRB stipulates that the giving of marriage gifts or payment of bride price shall no longer be an essential requirement for any marriage under the law. Where gifts have been given, the demand for their return on the breakdown of the marriage shall be an offence."



The catholic synod of Tororo Archdiocese recommended further, that members of parliament should be approached to debate the outlawing of the payment of bride price, as it impoverishes the couple, particularly if the young man has to pay an exaggerated amount of bride price to the parents of the bride. The delegates proposed that the entire Christian Community be involved in the struggle to replace the bride price system. The synod also condemned the excesses of wedding parties.

Another area where religions have similar agenda and goals as the State in its DRB is the age of marriage and consent to marriage. The church condemns child marriages and abductions of minors for marriage (canon 1089), whether in Gulu, Karamoja or in Buganda. Catholic church law, in canon no. 1095.1 adds that such a minor lacks sufficient use of reason; the church also teaches on consent in canon, 1102.

Another area of shared agenda: the teaching against cohabitation, which the DRB clearly declares as not a marriage; Teachings against polygamy, prostitution, and unjustified divorce etc. Also, teaching about equality of spouses.

From the above, let it be said that much of what the churches/religious teach in the pulpits has now to be complimented by the state law enforcement. That is what religious lack – the enforcement mechanisms.

## **6. AVOIDING PAST PITFALLS**

In the past we have worked in isolation away from each other and appeared to be against each other. Our exclusive diversity has been the source of our weakness as a nation and continent. Cultural, ideological, political, and religious isolation made us not only unwilling, but also unable to restore and deliver basic justice to our wives, mothers and sisters in the nation and continent.

During our own times there are still people who argue that human rights activists should not be over intrusive in people's cultures, even when they know that the culture is grossly in violation of women's rights.

Some still argue that culture and bride price in particular should not be legislated upon, but rather that it should be given time to phase out by itself, through the process of social evolution.

**A PAPER PRESENTED TO THE INTERNATIONAL CONFERENCE  
ORGANISED BY MIFUMI  
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THEME: BRIDE PRICE AND DOMESTIC VIOLENCE**

**PRESENTED BY: BENDA GARD N.**  
**GUILD PRESIDENT URDT INSITITUTE – ARU**  
**POBOX 24**  
**KAGADI-KIBALE DISTRICT**  
**MID WESTERN UGANDA**  
**TEL 256-041-256704**  
**256 048 2283 22820/1**  
**Mobile 077 883166/ 077 728211**  
Email [urdt@africaonline.co.ug](mailto:urdt@africaonline.co.ug)  
[gardbenda@yahoo.com.ug](mailto:gardbenda@yahoo.com.ug)

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**1. Introduction**

In Africa, Bride price is as old as traditional cultures hence as old as humanity itself. Having it as a strong African cultural norms/ values until the early nineties, social development polices and programmes frequently overlooked the affected party in either ways.

The linkage of bride ideally as it relates to the emanation of domestic violence, chronic poverty and other social domestication and adulteration was ambiguously neglected. Harmonizing and transcending these traditional ideologies based on cultural values with the social footing has actually been challenging at different levels hence a slow pace of trends in safeguarding the children and family.

Gender inequalities vividly or un vividly as per traditional perception remains the order of the day of which bride price was a very great subscriber in influencing the trend of the road to man's ownership of the family (wife, children and relatives).

Consequently the consistency in traditional domestication gap and actions to safeguard the children and the family remains too wide. This is because the practice is always reflected in the new generation hence has a big

bearing in terms of philosophy, ideology, power relations decision making and planning at the individual, household level and the societal level.

This paper tries to look at the challenging experience of bride price and domestic violence as it relates to safe guarding the children and the family and the wave it carries on the development process. It looks at the current reality of the state of affairs and also suggests the new approaches to strategically tackle the problem.

**Note: ``However, much cultural practices desired or undesired they may be, are influenced by the adaptation of the changing trends in form of ideology, philosophy and not a gift to our new generation rather loan that must be paid absolutely by whatever means though not all but visionary approach`` and he who commits him/herself to animal trapping bears responsibility to check and monitor the effectiveness of the trap``**

## **2. Definition of the key concepts**

- **Bride price**

According equity and vulnerability: Situation analysis of women adolescence children in Uganda 1994. Bride price is the package of resources in form of materials in kind or cash paid by the man to the parents of the woman so as to marry her.

However, Bride price in most case is referred to as Bride wealth or dowry. It can refer to the couple of things or experiences that one has to give in especially to the parents of girl so as to get a spouse

- **Domestic violence**

Is a physical, psychological and emotional anti social behaviour that destabilizes the well-being of the family members. It can also be more of extreme illegal action/ harmful behaviour adopted and applied to any member resulting from the conflicts of the family members to harm one another

## **3. Historical/Traditional perspective of Bride wealth**

In Africa, culturally as seen in the introduction bride price was considered paramount in the determining from where, who, and how to marry hence with a lot of influence in the marriage.

In the first case one was seen to be a man when he had a wife and the woman was respected too when she was married.

Given that marriage was a highly valued practice was very much focused on by emphasizing its associated norms and the factors that influenced it of which bride price was a paramount. Therefore historically some values and practices at the strength of the man as having the wife. Such strengths were in form of producing the children, in-laws increase labour and production and also it was hoped that it manifested real manhood. A single man didn't even take part in the village's decision making because he was believed to be ideally bankrupt and not fit to join other men even though he was intelligent enough there was no place for him. A single woman was regarded as cursed.

Traditionally, customary marriage was more than union of two individuals. It was a joining of two families; parents even arranged and negotiated the marriage, sometimes without the knowledge of either party (couple) and most often without the knowledge of the consent of the girl. Marriage was such a deeply held value and tradition especially in Uganda that almost all adults are supposed to marry. According to UDHS by 1988/98 only less than 2% of women were not married. Marriage controlled sexuality where it was assumed to give the husband exclusive sexual rights to the wife and the reverse is true which is less often expected to be true (Olowo -Freers and Barton 1993).

Given the strength of marriage as perceived in customary it precipitated the negotiation about the change between the two families. This was nothing else but to change the bride price with the girl the so-called quid-pro-quo. (something for something). The amount varied by ethnicity and region. Among many western tribes,

North-eastern Uganda bride wealth was paid highly and in cows and local beer. If the marriage ended in divorce the bride price was re-paid. Whereas in some regions like central bride price was usually more modest, it consisted of gifts including locally brewed beer to the bride's family. However for the case there was no case of repayment of bride price in case of divorce.

Historically the people argued that bride price custom is not the purchase of females but simply remembered the bride's family for the loss labour. They also argued that bride price makes the family stable because the families will intervene and negotiate to solve the conflicts. Others argued that bride price connects the relationship between the families meaning that the husband has loved the wife that is why he paid dowry. A husband manifested that he was able to look after the wife and please the wife's clan members though he stole the cows to pay they didn't mind where the resources were coming from so long as they got their share. Therefore looking at the historical representative of marriage and family there is a very great close linkage with bride price because as seen it determines a lot in the family building. It reached an extent of preparing what to pay. In advance for their boys likewise the parents of the girl would begin planning for their bride price they are expecting from their daughters. So it was automatic that bride price was to be paid no doubt and those who failed meant misfortunes and delegate of the couples by the parents or even some girls would be excommunicated from the clan.

Given that bride price had an influential stake in determining the type of the family to be created ahead deeply into determining the affairs of the family in terms of planning, administration hence a close linkage to domestic violence social political gender inequalities.

#### **4. Gender concern, strength and the general impact of bride price in reflection to domestic violence in the family**

The influence of bride price especially at family levels is far reaching cross cut almost all categories of people in the family i.e. women, children and the relatives. However its linkage with domestic violence has all along been undermined but which ever there is a great close relationship as discussed below.

Bride price catalyses the social inequalities between the two core member heads of the family both (man and woman). This is reflected in various gender roles and authority over resources.

In the first instance a man marries a wife and pays bride price with a diverse expectations leads to a thinking that the woman is an investment or property that is expected to produce profits in terms of bearing child children, rise the productivity / income and also provide respect to the husband and other relatives of the husband.

The implication being that the role of the husband is just to command her to do whatever he wishes. It is as if he bought her like he can buy the motorcycle that he uses for boda boda, making for him business so the wife is. Therefore once charged bride price even though it is what ever much he doesn't mind after all he knows the return is there instead he pays rushing to begin off.

But what happens, when the woman's productivity goes down let's say, she does not bear well, she falls sick occasionally and can't work effectively or the family remains poor to the extent that the man's expectation are not fulfilled then it becomes the war and chaos is created. A man now looks at a woman as the one who brought poverty at times the wealth the boy had before marrying is not realized and he attributes the blame to the woman as being of a bad omen. This results into fluctuations, constant quarrels and at times battering / beatings, a woman is in some cases chased from the house, begin sleeping out side and at times may end up divorcing with its associated challenges also.

Distribution of the workload at the family level becomes so the woman will always perform challenging in the matter that heavier workload. This is in the man paid for her therefore she had to work. Women perform productive and domestic work. They normally work long hours in the field and in addition perform their traditional tasks like preparing meals for the family collecting water, and washing in addition to the bed work to mention the few. Though men do some domestic work women do most of the daily routine. Surprisingly despite women's heavier work load and working for long hours it is usually carried with smaller resources, few

opportunities and low rewards. This continuously weakens them physically and psychologically as they are tortured by the work and the influence they are subjected to. It is not by their own will but the fact that they need to register the returns for what the husband paid bride price and have no alternative. The alternative could be divorcing but they fear that the parents may fail to repay the in-law hence she will always be committed to harsh conditions. According to UN statistics (1995) women counted for more than 50 % of the world's population but women perform 67 % of the world's working hours (promoting charge book one).

So bride price means that the woman belongs to the husband and his clan whatever case may be in good or bad faith. People believe that bride price entitles the man to the woman's labour, her obedience, her sexual availability and her fertility. It is also revealed in inequity and vulnerable (situation analysis of women, adolescents, and children in Uganda 1994).

Sexual relations in marriage become so tricky in the way that women are not supposed to negotiate for sex, they must always be available on demand. So upon paying bride price it becomes the right of the husband to want sex from the wife at whatever time he wishes and the woman has to agree without any excuse. It is (Ssali and Barton 1992) revealed that sex is expected for both partners but it is obligatory for a woman. Women have no voice in influencing the premarital sex in the family.

The custom violently domesticate women because some time men come back home too drunk and demands sex forcefully which erodes the peace of the woman. This has actually accelerated HIV (AIDS) a result of a woman being viewed as a mere object that was bought to solve all the problems of the man.

Looking at the leadership in the family and the control of the resources its believed that the property can't own another property / resource in that women are bought as a chattel / property and belong to the husbands so how do they begin to control resources while they also belonged they are bought like any other property that's why the word 'price' is joined to bride to be bride price.

The control and ownership of resources like land is further segregative to include women's rights besides harsh and heavier labour in the family women are restricted to production for domestic consumption. The man may decide to use the land for some cash crop but the money he gets is not brought to the family to be planned for together instead he uses it for his own consumptions

This has an implication that the woman should not follow up because if she does she may succumb to problems, she risks being battered / beaten or chased from the home for she will have intervened in issues of her less concern since the money came from the land that belongs to the husband. Harassment is hoped in case of women intervention is determined for their rights of property attached to their land. Since she had no right to own and control the land and she cannot do much and worse it is at times women can't cultivate anywhere they find unless they first get permission from the husbands. This may lead them to plant late or miss the season leading to poor production hence less food security in the family and starvation becomes the order of the day. Poor land ownership in the family results from perception adopted land since they bought and paid in form of bride price hence in quality. (Promoting charge book one 1994) Gender inequalities and meaning of gender roles.

The area of acquiring skills and information women still remain undermined in that women do not directly access information and not even enough avenues to undertake or acquire skills. This is because its not what they were brought for therefore they need to be home doing domestic work. That is why when a woman goes for her certain function, party, workshop/ seminars and she delays there for a while she may not survive the husband. There are many changes of being battered and fewer changes of being welcomed by the husband possibly ask how what transpired in the workshop. In most cases women are not released to go far for information and skills as men freely go hence deny them the right to information and movement (Annotated bibliography 1991-1992).

Leadership in the family varies according to the life setting of an areas and exposure. Much as bride price is influenced. This is the field of power relations. Urban and educated women will experience less subjection to torture since they always struggle for their rights. In addition the society looks at the category when paying bride price not as an investment say a person. But worth her status. At the end of the day there will erupt conflicts of influence in the family to fight for space. Who dominates and who is managing who and how? Becomes the situational order. This may involve violence in that the man will not accept to be commanded by

the wife because he paid her something and brought her to his home while the wife will not accept to be mistreated because she knows her rights.

At times such a woman tell the husband that if you want the money you paid, I can pay it to you. This may result in divorce which affects the children and others may go with the woman or remain with the father.

The children end up missing some parental love and others drop out from school. Whereas educated women will to some extent struggle for their rights due to the common/ local women because so complacent with head low because they have no alternative. If they decide to divorce the parents can't afford to pay back so they perceive the situation.

Bride price at times breaks the social relationship among the members of the family and relatives especially where misunderstandings erupt in the family. The relationship is viewed at in the angle of the children, in laws and the parents of the exchange families (husbands family and wives family). The children will tend to ignore the parent who has lost the space and go with the one with influence. At times children combine hands with the Mother to batter the father at times they charm him or ignore him mistreat him beyond his expectation in terms of respect and love as his children at times if the husband has less influence in the family or if one didn't pay enough bride price he will always be despised at time has no say before the in-laws. In some cases when such a man follows the wife in cases of misunderstandings they beat him up saying after all we didn't eat any thing visible from you. The same way the girl may be instead by both the husband after being chased from husband's parents chase her too that after all they didn't eat anything from her hence may lose relationship. When relatives of the wife come the man will mistreat them no eating, supper, shift them from the visitors' room because of revenge for the sister was brought expensively.

Payment of bride price in most cases exorbitant especially youths. Denies some people's rights and choices to marry. Some youths fail to marry because they can't get the hundreds of thousands for bride price. This increases sexual immorality that is looked at as the cheapest alternative, girls begin selling themselves on streets, begin producing on the courtyard hence increasing children without fathers. Such children are always harassed and domesticated where the father of the girl demands so much money and the youth perseveres and pays it off sometimes instalments, he will be strict to her in any activity and movement if she mistakes a bit she will be beaten like a cow because the man will look at it as if he is wasting his money he paid though other traditions say it is a sign of love what if he beats her and removes her teeth, or breaks the rib, is that love? (Olowo-Freers and Banton 1992). Rukungiri focus group (1994).

These hard attachments of bride price sabotage the youths marriage choices leading to development of sugar mummy and sugar daddy concepts, as the young girls will go with old men because they have the money and goats to pay for bride wealth. The young boys will go with the old rich women price in form of money or property apart from their lives. These categories of young people will always be mistreated, have no say in decision making, since they didn't contribute a lot in that family's development early on, (they found resources already available).

Widow inheritance is obvious and rampant especially where the bride price was heavily paid. The implication behind this is that once the woman is paid for she automatically becomes the property of that family and has to adhere to its principles. In case the husband dies she must be taken over by the brother- in-law or father- in-law. Failure to adhere implies the woman's parents must pay back the bride price (Uganda gender resource centre 1996) "even before the funeral of deceased husband some widows are mistreated by the in-laws who take all the property, including the children".

The property ownership rights in this case of orphans and widows are frequently denied in the absence of protection, they are often chased away from the late parent or husband's property (Odembos Maloba. 2002-03), (ASAWUCU 1994).

Bride price has a great influence on the status quo in social family setting that end up into social domestication and adulteration that violently and consistently leads to subsequent societal challenges that are likely to be reflected in the future generation. This has a great impact on social institutions as core programmes of the government.

## **5. Influence of Bride Price/Impact on other social institutions and government programmes:**

When we talk of social institutions we are talking of those other institutions that pull together different kinds of people to share common interest or for a cause. What I am trying to stress forward is that each of us is very much defined by our social relationship and our cultural traditions in the institutions distinctively in our society. Hence the freedom of the individuals is clearly subordinate to the interests of the family, clan and the community.

Social relationships are established and cultural traditions maintained through formal social groups and beliefs (Fuglesang 1982). However, individuals are indoctrinated with these beliefs to lead to consistency of the violence.

Much as domestic violence could be looked at briefly with the perception limited at the family level but in my view it is easy to spread and expand its scope of influence to the societal (National) level hence global impediment, violence as seen below.

When viewing Bride Price's influence on domestic violence and its subsequent transition to influence global programmes, I will tackle issues of education, economy, health, and government decision making / other policies.

In the education aspect children's rights especially the girl child have been violated which takes place at the family levels but the impact is felt at the social levels. Girls are removed from school since they come to the village to get married so as they get money in form of bride wealth. Sometimes girls are commanded to get married to men who are not of their choice simply because the parents want them to get married to rich old men where they expect wealth hence forced to drop out of school since some of them are less aware of their rights and can't refuse the command from the parents. This sabotages the government policies and wastes the government money and other resources for example if a girl in UPE was removed from school while in P.7 the government loses all the resources that was spent on her while still in school which would have been used to finance other programmes.

At times in the same way boys are removed from school to marry in which during the process of marriage of which they pay great sums of money other resources by paying bride prices, organizing extravagant marriage celebrations at times borrow large sums of money from money lenders. This often puts them in debt for life. This indebtedness makes the government revenue collection too difficult hence low service delivery and the order of the day becomes blaming the government for having failed to perform. Others will resort to engaging in robbery, drug selling, rebel activities because they think they will get the money to pay back the debts that were accumulated during the process of marriage. This threatens the National Security from just a mere thing from one domestic mistake. Hence leads to so many people to lose their lives on the expense of other people's hoped benefits. This analysis can also be backed by (De Silva et; 1979 ) changing marriage customs, case study 1 where the Tarun Mandal in Bhoomi Sena area reached an extent of becoming the bonded labourers for the "Sawkars" (money lenders) even at times for life in a bid to pay back the debts.

Which was Used to buy materials from these sawkars shops, feed them with that food but soon as marriage is over start working tirelessly for them .

- Once girls are blocked right from the family level to access skills, information and knowledge as seen previously then the nation runs short of skilled human power hence continuity to rely on the few men. This does not only reflect the imbalance in the labour market but also gives a clear picture of what the county is in terms of understanding what the freedoms and rights are, illiteracy rates and other social stratification aspects.
- The way these children are huddled right from the start at the house hold level such as being removed from schools, finding a lot of misunderstandings in the family such as untrustworthiness, mistreatment, they will automatically carry them on forward and these bad elements shall be reflected even when they secure offices if it so happens that few of them study. This is where you find that ethics at work are always very

poor and every body thinks of “every person for himself and God for us all” that’s why some people even though they are officers still don’t mind forcing their children to school when they neglect it its not their mistake but its because of what they used to see earlier before in their families.

- Decision-making is complicated even at the national level and has a lot of inequalities. Its not because its supposed to be, but because the female children are not empowered right from the family level. How does this come about? This comes about in manner that when a man marries a wife as earlier said she is used as a property and mistreated like nothing. In this situation the children will be seeing how inferior the mother is and how the father is taking his own decisions without consulting the wife. This inferiority complex is manifested or reflected in the children especially girls. These girls therefore will always even though they are educated find it difficult to oppose men in a bid to influence certain policies. That’s why most of the government policies have looked to be unfavourable because when debating on them women are either not fully represented in number or have less say to influence due to inferiority conflicts. The strings attached to the movement of such categories of persons limits them in terms of skills, information and knowledge and to them they think they can’t do much. (Kinyanjui and Mburugu –1989). To move needs to first apply for letters of permission. This has a lot of influence on ultimate beneficiaries of the politics of the custom where the poor females, orphans are colonised by the policy decisions and are final but males are highly privileged to extract or the female resources to be under the males control even without their will.
- The continuous men’s claiming women as property reduces production for market since women are always restricted to the production for domestic consumption. They can’t access chance to engage in the cash crop then staple food crops. This is due to the fact that woman’s rights over land are limited. Yet the children need to go to school, need to eat well, and eradicate poverty which makes, the government lose because the family may not afford to depend on the little staple food produced by the wife for school fees, home consumption and at the same time sell to pay tax. Yet the higher the income bases the higher the government revenue. Economically the government programmes will be sabotaged hence subsequent vicious cycle of poverty. Women have not been able to effectively access loans simply because they have nothing like a mortgage, they can’t put land as security because its not theirs it’s for the husbands, or even if she secures the loan it’s a man to control it of which he may end up swallowing the funds. This limits the level of capital accumulation and subsequent consistent burden to the government to always intervene (Daddiel 1989).
- People will not have time to work when they are running up and down in courts of law to demand back the Bride Price in case of divorce in addition to spending a lot of time in hospitals and clinics when hacked, production will go down. Bride Price to mention but a few as seen above directly or indirectly has a great implications to influence operations of the social institutions in any country and begins right from the family / house hold level but goes on expanding to influence the whole society.

## **6. Relationship of the theme with other foreign cultures and then the current trend**

Unlike in most African states and communities where the vitalness of marriage was determined by the payment of heavy bride price in form of cash, kind or both; at least the developed world has tried to liberalize the noun by freeing the choice making than imposing a lot of strings.

That why even in some countries like UK, Netherlands and other European countries people marry in contracts where one has the right to divorce at whatever time he/she wishes. A woman is not tied up by the bride price business that the parents will fail to pay back. The children are given their liberty to determine their own destiny unlike for instance here in Uganda where parents determine the men to whom the daughter has to be married due to money hunger.

However, its imperative to recognize that most forms of domestication of women and children have been widely practiced world wide though at different levels. In that gender inequality has been in most countries in the world only that for the developed countries its at a small scale because of different factors like, improved technology empowerment of women is very high, women and men education gap is very minimal if not non. So when women are already empowered it because had to domesticate them. For instance in around 2 decades by



1992 official development plans in Thailand either ignored women or considered them as wives and mothers (Thailand development newsletter 1991) it is revealed that there was exceptionally high percentage of working women in their land in those decades but their livelihood was based on labour-intensive and worked on only farm family owned.

Whereas in Thailand is that way the life in Medieval world is different, women worked along side their husbands in their traditions and the daughters were apprenticed in the same way as brothers. If a husband died a woman carried on his business or craft and such women were respected than being respected because of Bride price paid but because of what they do. However, the inequality still remained when it came to wage payment. Women were paid less than men but this was not basically based on values of what they have invested in the women (Book of word cultures)

Whereas here in Africa and Uganda in particular when the children fall in love with each other it's the boy to process the taking of the girls by paying Bride price, building the house, and things of the sort. In India the story is different it's the girls to pay the Bride price and the whole process is the reverse of the African one . Domestic violence in this case may come from other channels than bride price itself.

### **Current trend / perception**

Whereas in early days where bride price had its specific attachment like it was used to be paid in kind such as cows and food stuffs in most societies for example central region in Uganda where it included gifts and local beer, western Uganda and Eastern , northern tribes the bride price was high and paid in kind in form of cows including locally brewed beer (Nzita and Mbaga-Niwampk 1993 ) this normally complicated the affair but today the system is changing where it is basically paid in cash and at the brides' group choice others have called it ' Akasiimo' just an appreciation where its absence cannot make marriage null and void as it used to be in case of failure to pay it so it's no longer forced but a brides own will.

Trial marriages are increasing it is because historically trying a woman meant marrying and hence meant paying bride price so in case of any problem with the woman one would lose or begin the war of demanding back the bride price. But today a man can easily first test or try a woman if he finds her not productive he chucks her after all he knows he will lose nothing or less.

### **7. Recommendation /Way Forward**

To my own view I would suggested the following so as to bring the problem to at least a reasonable level

Bride price should not be a price otherwise it's a wrong concept or even scrapped off completely so as to avail the children with autonomy independent to make their own decisions if we are to have better families and to safeguard them.

Be critical to gender roles and gender biases need to critically be addressed and the women should be empowered in political and economic and social aspects in the same way men need to be empowered and let both know their rights.

The Ministry of Gender and Ethics needs to critically make enough research on what is actually leading to immorality in different sects such as corruption in offices, prostitution nude dancing 'EKIMANSURO'. This will help them to draw a strategic approach to solving the problem other than keeping shouting about those practicing it. Move from problem solving orientation to visionary approach.

More consciousness raising approach and organizational programmes for young children should strongly be invested in. This can be done through the review of education curriculum and enabling children to sensitize their own parents in various developments (parents workshops). Equip them with enough of the national values. This will help the future generation to build a national state that caters for all categories of people "they say you bend the tree when it is still young" these children need to grow while knowing what to do in common (common values, interests and philosophy).

There's a great need for the government to empower the youth in the consciousness raising and also their economic capacity so that they can avoid involvement in immoral acts search of money and avoid streets and a destination of their problems. The government should put a special fund for the youth and provide special loans for the youth because there are few youth who benefit from these other liberalized loans neither do they benefit from women loans.

However, it is imperative to acknowledge and recognize the initiatives by the government to come up with the domestic relations bill that is hoped to cater for the solutions of the bride price. Hopefully the Parliament shall proportionately, objectively debate it for the benefit of the future generation.

## **Conclusion**

Now that it has been realized that bride price has got a great impact on the development at different levels in a society; it is important to recognize, understand and acknowledge that institutional culture and practices have strengths as well as weaknesses depending on the perception, philosophy.

This requires a visionary holistic approach where the key greater equity for improved well being of all the lies in the adaptation and promotion of strategic common values as the road to safeguarding the children and the family. This is better than focussing on the maintaining of the first forms regardless of the benefits or risk and if it is to be maintained needs to be revised and polished. Nevertheless it ideal to recognized the shift in perception, philosophy, practice, and the general current trend.

## *Abbreviation*

UDHS: Uganda Demographic Health Survey

URDT: Uganda Rural Development and Training Programme

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# **LOBOLA AND GENDER VIOLENCE: A SOUTH AFRICAN PERSPECTIVE (WORK IN PROGRESS)**

**By Renée Jeftha**

**Gender Advocacy Programme, Cape Town, South Africa**

South Africa celebrates its 10<sup>th</sup> year of democracy this year and celebrates the enormous change from an apartheid regime to a democratic, majority government based upon freedom and human rights. Thirty percent of parliamentarians in National governments are women and twenty eight percent in Local government. This puts South Africa at number 14 in the world in terms of gender equality in government. Although women have a voice in parliament, many women do not have a voice in their own homes. The very person who claims to love, respect and protect them silences them. In South Africa, one in four women are abused by their intimate partners (MRC:1999) and a woman dies at the hands of her intimate partner every four days (CSVR:2001). The long struggle of obtaining gender equality within the home and within society, is only just beginning. Gender equality is the only tool that will grant both women and men equal access to the fullness of life, a life of opportunities and resources.

In this paper, the practice of lobola will be examined in order to establish whether this practice is just a mechanism to perpetuate the patriarchal roots within society and a measure to perpetuate gender violence. The learnings of the author have come about due to the various interactions, trainings and counselling with abused women. In so doing, excerpts from various people interviewed are included, as this reflects the opinions and voices of those who are affected by this practice.

Of course, other cultures and cultural practices, such as the dowry, although practiced differently, have similar views on patriarchy and the oppression of women but this will not form the basis of the discussion in the paper.

## **Cultural practice of lobola**

Culture is so intertwined with our natures that its practices are rarely questioned by those who have internalized it. It is all-encompassing, like water to a fish, that it remains preconscious and is obvious only when it is challenged.

*Culture* is a learned behaviour, which acts as a template; it has a predictable form and content that shapes behaviour and consciousness; it is passed from generation to generation (Nkutha & Mtintso: 2002). The family is the very first school in which practices are learnt as a natural part of growing up. The community and other societal institutions then become the learning grounds.

Lobola is a fundamental basis of marriage amongst most, if not the entire African tribal groups in South Africa. The practice differs however from one tribal group to the other. Perceptions of lobola is not only different due to the various ethnic groups in South Africa but it also differs according to the differences in class, gender, age, sex, geography (rural vs. urban) and social differences.

Masonda 1992, defines lobola as “rights in respect of children, so that marriage rather than paternity determines legitimacy”. The author further states that lobola is a system, which “strengthens family bonds established by the relationship of marriage”, and thirdly that it “serves as a compensation to the parents of the bride for the loss of their child”. The fundamental practice is that the marital rights of a woman are transferred against the payment of cattle from the potential husband’s family. Historically, the use of cattle in lobola was utilized, as cattle were the sign of the social positioning of a family. By giving cattle, it symbolized that the family willing to pay the heads of cattle, were economically viable and able to care for the woman materially.

“It is a sign to the maternal family that their child will be looked after”<sup>99</sup>

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<sup>99</sup> Pumla Mncayi, Director of GAP: 29<sup>th</sup> January 2004

“To prove to the bride’s family that their son is capable of looking after their daughter. That he will be able to support her”<sup>100</sup>

Throughout Africa, cattle or livestock are used as symbols of a man’s status and wealth. It is also used in various ceremonies through the passage of life such as at birth, puberty, marriage and death.

### **The formal procedure**

When a couple decides to get married, the man speaks to his father about his intentions. The father, as head of the family then speaks to the elders of his clan. Negotiations as to the amount of cattle given in lobola, is negotiated between two selected groups of male elders representing the maternal and paternal families. The intended bride is not part of the negotiations and has no input into the negotiation procedure. When negotiations are completed, the bride-to-be and the women are told of the decision.

The manner in which lobola is made is also negotiated amongst the group of negotiators. Numerous deadlocks and threats of walkouts occur prior to the final negotiation taking place. The agreed upon heads of cattle are given to the bride’s family prior to the wedding. In some instances, three quarters of the livestock are given prior to the marriage ceremony and the balance is given after the marriage.

### **Exchange for cash**

With the advent of industrialization and people moving to towns and cities, the exchange of cattle in lobola is less practical and has been replaced with the exchange of money. For many, this marks the beginning of the commercialization of women. This has “transformed lobola into a business transaction diminishing its worth as a social custom binding two families”.<sup>101</sup> There is no set amount made for lobola but is now dependent on the financial status of the intended groom. Additionally, the level of education of the bride-to-be has become a trump card for parents as the more educated the bride-to-be is, the higher the lobola will be.

### **Attitudes to lobola**

Through discussions and training with women, there seems to be three schools of thought toward the practice of lobola. The three groups have their perceptions of women in relation to the practice of lobola. Firstly, there are those who view lobola as sacrosanct. They are aware of problems within the practice of lobola, but believe that it must continue, as this is what their grandfathers and forefathers have done.

Findings from a study conducted by sociology students at the University of Natal in 1991 in the Durban townships of KwaMashu and the Ixopo area, showed that even though women and men were concerned about the financial contributions of lobola, the majority of the respondents felt that lobola “strengthened the male authority and domination within the family” (Walker:1992). One of the rural men stated;

“A woman can’t dictate because she is in a very fragile position. I buy her and she has to obey me because she is my property”.

Although men and women were concerned “with the institution as it is currently practiced, and differing perceptions concerning the status of women” (Mugadi et al) they however believed in the practice and did not believe that it oppressed women but regarded it as part of their tradition.

The second school of thought has examined the practice of lobola and proposes that due to the changes and commercialization of lobola, the practice should be abolished. Hoeane: 2003 states that, “Just because customs were practiced in the past, does not mean they cannot be abused, in the present nor questioned. If anything does not work or is incompatible with modern life we have to discard it”. People like Dr Heoane believes the practice of lobola should be discarded as it is losing its meaning. They acknowledge that men are hesitant to engage in discussions for change, as they are hesitant to relinquish their positions of power and recognition.

A third school of thought believes in the fundamental principles of lobola and draws on the positive meanings of the practice, particularly those which cement family ties. However, they do acknowledge that there have

<sup>100</sup> Nontsasa Makupula, social worker: January 2004

<sup>101</sup> Dr Thabisi Hoeane, Lecturer in Department of Political and Internal Studies: 27 January 2004

been changes in the way lobola has been practiced but they wish to keep the positive aspects of the culture and intertwine it with their present lifestyles and circumstances.

“When I get married, yes my boyfriend will pay lobola but it will be a reasonable amount, something that he can afford. My family will be fair and lenient because they know that we will need to look after our family as well as start from scratch. If they overcharge him they will be making my life difficult because my husband will not be able to support me.”<sup>102</sup>

This group supports lobola but also believes in the equality of women within a relationship. Geeta Rao Gupta, president of the International Centre for Research on Women and Doctor of Social Psychology aptly states that “power is infinite in the long term, so that if you give women power you’re not taking away men’s power, you’re adding to the power of the entire household, the community, the country.”

### **Linking lobola to gender violence**

It is apparent that there is visible unease at challenging or questioning the practice of lobola. It is assumed that because it is a cultural aspect, it is disrespectful to challenge someone’s belief system.

**In African culture, various gender roles are assigned to men and women. Men’s upbringing encourages them to be confident, outspoken and dictators and women to be quieter, obedient and well mannered. Men are seen and demand to be the head of the home and has the ‘right’ to make decisions, even without the women’s knowledge. The then Black Administration Act of 1927 gave men the legal right to undermine their wives as women were regarded as minors and were not able to make any decisions on their own.**

Ntombikayise Shangase (2000) states that women are socialized through culture, not to talk back to men, as this is a sign of disrespect. She states;

“women are taught that the man is always right, and when she marries she is told not to embarrass the family by returning home”. Should a woman return home, she carries a stigma referred as “the one who has come back from marriage” (umabuyekwendeni)<sup>103</sup>. This stigma is placed on women and nothing is placed on the man who could have abused her. This makes it difficult for women to speak-out about violence within the home as well as limiting their options when they want to leave. Women are advised by their parents to remain in the marriage as lobola was paid for them. Cultural practices thus contribute to the continuation of patriarchy within society.

Through the imbalance of power between men and women, women hold the subordinate role within the home. The fact that women are not part of the negotiations when lobola is determined, reinforces women’s role to be subservient. Lobola strengthens the male authority and domination within the family.

Women have been conditioned in thinking that the practice of lobola dignifies women and that through lobola, they are valued and respected. Women for whom lobola has been paid are regarded in higher standing than women who has not. A woman who chooses not to have lobola paid, is regarded as ‘umfazi we phepha’, a woman of paper only. The woman will not be accepted by her in-laws and not be entitled to her husband’s surname.

Furthermore, the question arises, that if lobola is a “thank you’ to the maternal family for rearing a daughter, why is it negotiated and a determining factor for someone to become a wife? It should be a gesture and not a determining factor in order to get married.

With the payment of lobola, women are regarded as commodities, something to be purchased. It is thus inconceivable for men to think of their wives as being equal to them, as he believes that he cannot be equal to his “property”. The husband assumes he has various rights over his wife on the basis that he had paid lobola. He thus believes that she has no rights and that the wife is not allowed to argue or voice her opinions. Her behaviour is judged against the value paid for her.

Not only does the husband feel that he has a right over his wife, but the in-laws sometimes regard her as a slave within the home. Additionally, the in-laws regard the woman as their property and it is accepted that the

<sup>102</sup> Nontsasa Makupula, social worker: January 2004

<sup>103</sup> Pumla Mncayi, Director of GAP: February 2004

husband's brother also regard the wife as his and she has to obey the various requests he has, except in having an intimate relationship with him.

"Sometimes even the in-laws contributes because they resent the bride for the huge amount of money their son paid."<sup>104</sup>

"The wife becomes the bride of everybody"<sup>105</sup>

This leads to verbal, physical, emotional, financial and sexual abuse, as the man tends to control the woman.

"The man feels a sense of entitlement"<sup>106</sup>

"When my father's cows have paid for you, therefore I am entitled even over your body"<sup>107</sup>

Due to the unequal balance of power between men and women, women are not in a position to negotiate safer sex by requesting her husband to use a condom. The subordinate position of women and the gender roles women assume, makes women more vulnerable in contracting HIV/AIDS and being more affected by the virus than men. Contrary to the view that HIV/AIDS is a 'gay disease', many women contract the virus through their unfaithful husbands and partners.

Poverty may also force parents to negotiate exorbitant amounts of money and thus, secure their financial state at the expense of their daughter's happiness.

Lobola is not normally paid back when a woman decides to leave the relationship unless she has erred prior or following the wedding. If a woman has an extra-marital affair and conceives a child, the paternal family can request that the father of the child pay back lobola as retribution. However, this does not apply to the man should he have an extra-marital affair. He would be regarded as virile and by having children would be seen as 'proof of his manhood'.

### **South African Law: The Recognition of Customary Marriage Act No 120 of 1998**

The Recognition of Customary Marriages Act No 120 of 1998 replaces the Black Administration Act of 1927, which condemned black women to a legal status of a 'perpetual minor'. Women were not allowed to open a credit account. Under apartheid, traditional or customary marriages were not legally recognized and only regarded as "unions". Now, due to the Act, a wife in a customary marriage has – on the basis of equality with her husband and subject to matrimonial property system governing the marriage – full status and capacity, including the capacity to acquire assets and to dispose of them, to enter contracts and to litigate in addition to any rights and powers that she might have at customary law. The Act recognizes monogamous and polygamous customary marriages.

Black South Africans are subject to two sets of laws – customary and civil law.

Research conducted by the GRP project of the Centre for Applied and Legal Studies in Gauteng, showed that most South Africans marriages involved some customary requirements like the transfer of lobola and some civil requirements such as the solemnization of the union. This seems to be contradictory as lobola, which appears to be discriminatory toward women, is reconciled with provisions in the law which is based on equality and non-discrimination".

The challenge as Likhapa Mbatha: 2002 states, "is to ensure that there is a balance between cultural values and gender equality." The constitution does not provide guidelines on what should happen in the case of conflict between cultural and other rights protected by the constitution. The scope and definition of the protected cultural rights is vague.

A further challenge is to convince men of gender equality within the home. It is wonderful that South Africa can boast of its progressive constitution and Acts which propagate the equality of women but it does not mean anything when it is not applied within the home setting. Legislative reform alone will not change the patriarchal

<sup>104</sup> Bulelwa, student: January 2004

<sup>105</sup> Pumla Mncayi, Director of GAP: February 2004

<sup>106</sup> Pumla Mncayi, Director of GAP: January 2004

<sup>107</sup> Mbuyiselo Botha, Men as Partner: January 2004

mindsets of men who have for too long enjoyed the decision-making powers in the home and the community. Mbatha: 2002 states that “South African women have to ensure that men’s attitudes towards sharing power in the domestic sphere change in line with the provisions of the Constitution and the legal developments”.

## **Way Forward**

It must be realised that culture is not static; culture changes all the time. If traditional norms are causing women to be treated as mere objects and perpetuates a cycle of violence, destroying families, households and communities, then these norms must change. It is thus necessary for customs and traditions to be challenged and confronted.

Men, women and young people live together in communities and rely on one another to a great extent. It is thus important that any solution should include everyone who is affected by it. It is not only the practice of lobola that should be examined but also the underlying practices of patriarchy and gender inequality. Patriarchal attitudes are the breeding ground for men’s attitudes toward women where they feel they have a right over women and where women regard themselves as sub-ordinate to men. Lobola makes the practice legitimate.

It is important to persuade men of engaging in a practice of lobola where the familial traditions are upheld but the abusive nature of lobola must be discarded. For many, it is important to preserve the rich culture of lobola but to discard the oppression and power imbalances. It is to find the balance of holding the purity of the tradition with that of gender equality. One way in doing this, is to direct all gifts to the couple and not to the parents.

Awareness-raising programmes around issues of women’s rights and equality should be given not only to women but also to young people and men in order for a new consciousness to be realized. Women’s rights are human rights and it should be spoken about and challenged in relation to culture, the Constitution, Customary Marriages Act and to the treaties that South Africa has ratified such as CEDAW and the Beijing Platform of Action. This should be discussed in churches, schools, shebeens and places where people generally get together. It is vital that traditional leaders be engaged in these discussions, as they are the upholders of traditional laws.

This can only be done by collectively engaging men, women and young persons in the fight toward gender equality. Oppressive practices should be addressed and men should be helped to find new ways of expressing their masculinity.

By no means, is this a complete study of the challenges that faces us in examining cultural practices and placing it under a microscope to see whether it reinforces inequality in our society. In any study, it is important to consult the people on a local level in order for them to make a decision about factors that are affecting their lives. It is also thus understandable that when one’s very pattern of life is questioned, there will be a measure of resistance. It is however necessary to probe, investigate and challenge.

The tragedy is that some societies wait too long so that destruction occurs on a large scale before change begins to happen.

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**Women living under muslim laws**  
**النساء في ظل قوانين المسلمين**  
**Femmes sous lois musulmanes**

**Some Thoughts about Bride Price**

**Paper presented at the International Conference on Bride Price, at Makerere University, Kampala Uganda - 16<sup>th</sup> – 18<sup>th</sup> February 2004, by Asma'u Joda (Ms), Programme Coordinator, Africa South of the Sahara, International Coordination Office, International Solidarity Network of Women Living Under Muslim Laws**

**Introduction of Women Living Under Muslim Laws<sup>108</sup>**

The Network 'Women Living Under Muslim Laws' was created to break women's isolation and to provide linkages and support to all women whose lives may be affected by Muslim laws. The use of 'Muslim Laws' in our name reflects two equally important issues. First, laws formally considered Muslim vary, sometimes radically, from one cultural context to another.

Second, a plurality of legal codes co-exist in each cultural, social and political context. At the very least, each society has a formal, codified legal system and a parallel system in which customary laws and practices combine. Further sub-divisions can also occur - for example, some countries may have two formal codes, religious and civil. Similarly, customary laws are diverse.

The Network recognises that these parallel systems are of vital importance to women - because the maximum combined impact is felt in family and personal matters. These affect women disproportionately and usually in a manner that undermines their rights and autonomy.

Despite the diversity - within and between social, political, economic and cultural environments - all too often the whole system is presented and internalised as being "Islamic" with many effects on society at large and women in particular.

The Network's name 'Women Living Under Muslim Laws' (WLUML) is an acknowledgement of the complexity and diversity of women's realities in Muslim countries and communities. Our choice of name also recognises that women affected by Muslim laws may not be Muslim, as they may have chosen another marker of political or personal identity.

**WLUML therefore extends to:**

- women living in countries or states where Islam is the state religion, as well as those from Muslim communities ruled by minority religious laws;
- women in secular states where there is a political presence of Muslims making a demand for religious law;
- women in migrant Muslim communities in Europe, the Americas, and around the world;
- and non-Muslim women who may have Muslim laws applied to them directly or through their children.

**WLUML was formed in response to situations that required urgent action, during the years 1984-85**

These included:

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<sup>108</sup> [www.wluml.org](http://www.wluml.org)

- The case of three feminists in Algeria, arrested, jailed without trial, and kept incommunicado for seven months, for having discussed with other women the project of law known as the "Family Code", which was highly unfavourable to women.
- The case of an Indian Sunni woman who filed a petition in the Supreme Court arguing that the Muslim minority law applied to her in her divorce denied her the rights otherwise guaranteed by the Constitution of India to all citizens, and called for support.
- The case of a woman in Abu Dhabi, charged with adultery and sentenced to be stoned to death after delivering and feeding her child for two months.
- The case of the "Mothers of Algiers" who fought for custody of their children after divorce.

The campaigns that have been launched on these occasions, amongst others, received full support both from women and men within Muslim countries and communities, and from progressive and feminist groups elsewhere.

Taking the opportunity of meeting at the international feminist gathering "Tribunal on Reproductive Rights" held in Amsterdam, Holland, in July 1984, nine women from Muslim countries and communities: Algeria, Morocco, Sudan, Iran, Mauritius, Tanzania, Bangladesh and Pakistan, came together and formed the Action Committee of Women Living Under Muslim Laws, in support of women's struggles in the concerned contexts. This Committee later evolved into the present network.

WLUMML's purpose is to facilitate access to information and to each other.

Its existence therefore depends on our links and not on the specific activities undertaken or positions held by any group or individual involved in this process.

WLUMML believes that the seeming helplessness of a majority of women in the Muslim world in effectively mobilizing against and overcoming adverse laws and customs stems only in part from being economically and politically less powerful. It also stems from the erroneous belief that the only existence possible for a Muslim woman that allows her to maintain her identity (however that may be defined) is the dominant one delineated for her in her own national context.

In fact, the common presumption both within and outside the Muslim world that there exists one homogenous Muslim world is a fallacy. Interaction between women from different Muslim societies has shown us that while some similarities may stretch across cultures, classes, sects, schools and continents, the diversities are at least equally striking.

The different realities of women living under Muslim laws, range from being strictly closeted, isolated and voiceless within four walls, subjected to public floggings and condemned to death for presumed adultery (which is considered a crime against the state) and forcibly given in marriage as a child, to situations where women have a far greater degree of freedom of movement and interaction, the right to work, to participate in public affairs and also exercise a far greater control over their own lives.

#### **WLUMML's objectives are:**

- To break isolation and to create and reinforce linkages between women and women's groups within Muslim countries and communities;
- To increase women's knowledge about both their common and diverse situations in various contexts;
- To strengthen their struggles and to create the means to support them internationally from within and outside the Muslim world;

In essence, the purpose of WLUMML is to increase the autonomy of women affected by Muslim laws by encouraging them to reflect, analyse and reformulate the identity imposed on them through the application of Muslim laws and by doing so, to assume greater control over their lives.

### These objectives are fulfilled through:

- building a network of mutual solidarity and information flow;
- facilitating interaction and contact between women from Muslim countries and communities and between them and progressive and feminist groups at large;
- promoting the exposure of women from one geographical area to another in and outside the Muslim world;
- and by undertaking common projects identified by and executed through network participants.

The network is coordinated by the International Coordination Office, which is in the UK and two Regional Coordination Offices, the Africa Coordination Office, which is “housed” by Baobab for Women’s Human Rights in Lagos, Nigeria and the second at Shirkat Gah Women’s Resource Centre, Lahore, Pakistan. Please see the end of this paper for all the contact details.

I will do my best to present this paper with the principle of my organizations at the back of my mind, but take all responsibility for all opinions expressed.

### What do we understand by the term **Bride Price**?

When I hear the term Bride Price, I immediately think of dowry, dower, sadaqi, mahr, bridal wealth etc. Depending on where you come from, your religion, your ideology etc. You can define these terms to mean the same thing or to mean completely different things.

The term *bride price* is defined; in a book recently published by my organization “Knowing Our Rights: Women, family, laws and customs in the Muslim World”<sup>109</sup> as, *money given by the groom or his family to the bride’s family in exchange for hand in marriage*.

*Dowry*, is the money and or property that, in some societies, a wife or her family must pay her husband... or ... a husband must pay to his wife’s family when they get married... in some communities, the dowry remains the absolute property of the wife<sup>110</sup>. While in others it belongs to her family.

*Sadaqi*, was in pre-Islamic Arabia a gift to the wife at marriage. Used in some communities to mean a gift in addition to mahr, and synonymous with mahr in other communities<sup>111</sup>

**Mahr is the Arabic word for dower. This is goods and/or cash to be given by the groom to the bride as a requisite of a valid Muslim marriage. In some communities it may be given at the time of the marriage ceremony (prompt) while in others promised at a later date or to be paid upon divorce or death of the husband (deferred) or divided into prompt and deferred portions<sup>112</sup>**

Marriage in Islam is a contract meant to be between two people i.e. the bride and the groom. Before a marriage takes place in a Muslim community, two representatives one for each of the couple; called a Wali (representative) will sit down and negotiate. In some communities they negotiate for high amounts, as this is the woman’s asset and or future bargaining power; as Islam permits divorce; in the event that the woman wants to get a divorce and she needs to tip “justice” in her favour, she might be able to use this “deferred” mahr to gain or accelerate her access to freedom.

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<sup>109</sup> Knowing Our Rights is a handbook produced by Women Living Under Muslims Laws [2003]. Which brings together research carried out as part of the Women and Laws Research Programme, which took place in over a 10-year period in more than 20 countries in Africa, Asia and the Middle East.

<sup>110</sup> Women Living Under Muslim Laws (2003), Knowing Our Rights: Women, family, laws and customs in the Muslim World

<sup>111</sup> ditto

<sup>112</sup> ditto

## **The practises of Bride Price, Sadaq, Mahr etc**

Without looking at the whole practise and women's reality, I would condemn any form of money or property given to a woman or her family in consideration for her hand in marriage. For me and in simple terms money or very expensive gifts tantamount to selling a woman into slavery and I would condemn it outright, but this might not work for all societies. Thus each community has to look for its strategies to deal with the low status of women. In trying to come up with solutions we need to make sure we do not ignore any salient points, such as a bride's ability or lack of ability to live without the support of her family or of another person's assistance.

The practises of bride price etc, over time must have had its justification, mostly steeped in cultures and tradition and mostly within patriarchal set ups. In most communities, the exchange is "said" to be from the male to the female. But we need to recognize the fact that in others it is women who give the "dowry" while in others there is an exchange between both families. If you come from a community that the male gives the bride price, you assume that, that is why the status of women is low in your community and the community that women give, women will have a superior status, while those that exchange, you would think had equal status. Strangely this is not so. In all the variations given above it is still the woman who is "the wife" i.e. the second person in the arrangement and who has the lower status.

The world has come to accept that a "good woman" will ultimately marry. And so she has been trained and socialized to accept this role. Associated with this role is her biological function of bearing children, so "naturally" she will spend a better part of her life unable to move far from her "home". So society has assigned her, her second natural role as the "homemaker", thus the nurturer etc. She will then naturally be taught how to get pregnant, look after the baby, the children, the husband and the extended family. It is often regarded as a waste of time for her to be trained in any income earning skills, after all she is going to become someone's wife and he will care for her. He will provide all her needs and that of "her children" so what more does she want? Need? For a long time that was how girls were brought up and still are in some societies. Families in wanting their daughters to be happy, thus looked for the best provider(s), man and family to "entrust" their daughter to. They do not see this as a form of selling their "precious daughter" or a means of taking away her right to choose.

There is a fear in some communities that if women are educated and or given skill's they might earn more than their husbands and thus not give him the "respect" that he has a right to, for simply being born a man!

Marriage takes place in every community; that I have heard off. It is a universal practise. The ceremonial aspect differs from one community to the other and people would like to attribute this difference mostly to different religious practises. I would like to see it as diversity in practises, i.e. the proverbial broom but all tied up by the same string. I would like to use examples of marriages to show the differences and the similarities and to underline that the differences come more in the geographical location and class than in religion. I think we can all accept that our communities all believe that a woman's ultimate is to be "married". It does not matter whether we are Muslim, Christian, Hindu or free thinkers. Most of us believe that something must be given in consideration for a marriage to take place and that it is a thing to celebrate, even if it is purely a business deal and or a merger to strengthen the family fortunes, there is still an expectation of "festivity".

In Nigeria, which is a multicultural, multiethnic and multi-religious one. There is an assumption of a white wedding dress and a ring for the Christian wedding, Fatiha (a verse from the Qur'an) and mahr for a Muslim marriage and alcohol and bride price etc for a traditional non-Muslim marriage. But none of these cultures and religions do only the stipulated. The Muslims in the northeast of Nigeria believe that marriage is a social function, which requires a Wali for each of the future couple, witnesses to see that the request by the groom's representative for the hand in marriage was done and that the bride was given and the mahr accepted, but this is not all. The man and or his family are expected to give a dowry, to show they are interested and are making their intention to ask for the hand in marriage of the girl/woman, known, this consists of a trousseau for the bride, a modest suit case of clothes, cosmetics, shoes and bag for her mother and pieces of cloths (6 yards each) for her female relatives. After the marriage rite and when the bride is being taken to her groom's house, she carries along her own dowry for the groom (clothes) and his female relatives and a bed, bundle of cloth (10 yards or more ...) and shoes for his father and "lumba" bridal wealth (which is at least twice the sadaqi/mahr) for her husband. She would also take along "her" kitchen utensils and equipment, her bedroom furniture and if

her family can afford it even the family sitting room furniture. In cases where the bride is from a “wealthy and westernised” family, she could be taken to her marital home in a white dress and she would expect her husband to give her both an engagement and a wedding ring. There will be days of celebration etc. The only observable difference in a Christian family of the same class, is the church aspect, instead of the fatiha and in the case of free thinkers, only the religious ceremony would be absent, but a solemn moment will be observed. But none of these weddings would be accepted by the society unless the festivities have happened and the dowries have been exchanged. The simple performance of the religious or civil act (registration) is not considered enough. For actually often Christians would have done “the traditional” marriage and lived together and would save and set a date for the church blessings and signing of the register. For the Muslim the fatiha and mahr and dowry are not considered enough, the celebrations (the parents must let the food and music flow lavishly) and the wife’s dowry must exchange hands and be publicly distributed.

Iran is one of those Muslim countries that negotiate for huge mahrs, where most or all of it is deferred, until the husband decides to divorce her, in which case the divorce does not become effective till he pays her the deffered amount or when the husband dies and she has to be given her money before the inheritance is shared out to all his beneficiaries i.e. including her. In Islam there are also several kinds of divorces, the woman can initiate one. In Iran and some other Muslim communities they still insist that a man has to “agree” to the divorce. So although a woman can initiate a divorce, the man has to agree before the divorce is valid. But the possibility exists “... in two situations. First according to article 1130 of the Civil Code, if the wife can prove to the court that the continuation of the marriage would be harmful to her, she can force the husband to divorce her.” If he refuses, then the court would try to persuade him and if they fail then “the court will give her a judicial divorce...” However, this “is left to the discretion of the judge, in a patriarchal society and where the religious leaders favour men over women”, where men see everything as a challenge to the divine power given to men over women; “it means that women do not often win their cases.” Which might then mean that the woman would not be able to move on with her life and the fact that she has sought for this divorce would make life even more unbearable. But if she has had her mahr deferred and especially if it is substantial, she has a “bargaining tool”. Since this deferred mahr is supposed “to be paid by the husband before the divorce can be registered. In order to hasten this process, women sometimes give up their mahr, especially if it is a large one...” This then gives it (the divorce) the value of an “agreed divorce (permanent), which is irrevocable.”<sup>113</sup>

Another Muslim country that practises a steep mahr, is Saudi Arabia probably because of the country’s wealth. The husband is expected to give a huge mahr, which the bride keeps for herself and uses it as she pleases. “Further, the husband is expected to provide not only the mahr but also the entire household and wedding expenses... the wedding cannot take place until the entire household – which includes a completely furnished apartment or villa – is ready for the married couple to live in, and this is the sole responsibility of the groom and his family...”

The payment of bride price is becoming a problem across the world, more and more bride price is being demanded and more and more hardship is being recorded as a result of it. Women are being seen as commodity, to buy and sell. And in some communities the term “selling” is actually used. It is reported that in Senegal, Pakistan, the Gulf countries, young men are no longer able to marry locally, because of the high bride price. What is causing this high bride price? Many reasons are given amongst which is poverty and compensation for bringing up the wife etc. In Pakistan bordering with Afghanistan, young men who cannot afford to pay the high bride price in their community purchase kidnapped Afghani girls. Whereas in some of the Gulf countries where a household must be set up, they also marry outside the country. Government has tried to intervene by offering to pay part of the mahr. In another situation in Nigeria, Zamfara State (first Sharia State in Nigeria), one of the governments first priority; as a Muslim State; was to order unmarried women to do so or be sacked, while offering to assist men; who were willing to marry/save these women from their unmarried state; to pay the dower.

### **Bride Price Practise and its Implications on Women’s Human Rights**

Any form of rigid social practise that demands financial and material exchanges for marriage to be sanctioned, does not think of women’s long-term social benefit. These cultural and traditional practises start to affect the life of girls from the day they are born. The girl is valued and treated according to her communities

<sup>113</sup> Women Living Under Muslim Laws (1996), Special Dossier: Shifting Boundaries in Marriage and Divorce in Muslim Communities

expectations of what she is expected to do, to justify what is done for her. So even if she is not physically treated badly, she is often made aware that she is an expense and or liability i.e. mentally she suffers.

One of the main reason for this conference is to call for the abolition of these preconditions to marriage and even those who are uncomfortable with its total abolition, recognize that something must be done to stop the violence's committed against women attributed to it. There is recognition by the majority of peoples that something must be done.

As mentioned earlier in this paper, there is a diversity of the practise of bride prices, dowers, sadaqs, mahrs etc. I am sure a lot will be mentioned during the conference.

We have heard that in Uganda that many cows i.e. nine in the East and as many as the spear thrower can get in the North (i.e. in the North a spear thrower is taken to the herd of the groom or his family, where he throws his spear and all the cows between him and the spear is taken over by the bride's family) are given in dowry for the hand in marriage of a wife. These cows are either immediately distributed and eaten by the extended family or used to pay the bride price for the brides brothers. In the event of unbearable hardship and domestic violence a woman wanting a divorce, her family is faced with having to refund these cows – this is most often not possible. So she has to remain within an abusive and unbearable situation... often at the risk of death. A man told to stop beating his wife would often reply "I am beating my cows".

I would like to give further examples of the practise of bride price where it exists in Pakistan. Women are owned either by their husband and his family as in the North West Frontier Province (NWFP) or by their own family as in the Baluchistan. In the NWFP if her husband dies, she is inherited by a member of his family, usually his younger brother, who is more likely to be unmarried; maybe even 5 years old; in Dir, if she refuses then the family have a right to sell her off to whom they so please, whereas in Chitral she could be "sold" to someone of her choice. In Balchustan the wife is considered as belonging to her own family and when she is widowed, her own family/ brothers will sell her off. In this case if she has sons' old enough to "buy" her freedom, then she could be saved from the situation "In Quetta area, one Baluch woman's brothers wanted to 're-sell' her, following her husband's death. Her sons, who were aged 17 and 20 years old, paid Rs 40,000 to their mamoo (uncles) to prevent the marriage."<sup>114</sup>

Other issues that come up are e.g. in areas where dowry is practised in South Asia, women are disinherited under the pretext that expensive dowry has to be provided for them when they are getting married.

In Muslim and other communities that value virginity very highly, abuse such as restricting the free mobility of girls from puberty is practised. In some extreme cases a girl not found to be a virgin on her wedding night could be rejected or half of her mahr must be repaid etc.

Some traditional practise include dowry from the man i.e. in the case of northeast Nigeria as already mentioned above, amongst this dowry is a gift for the father. In a case; a couple had, had three daughters that died at birth and when the woman had the fourth, which was another girl, the husband gave her a hoe to bury the girl whom he was sure was going to die and divorced her. This child did not die and she married another man, who brought up the daughter as his own. She was sent to school, graduated and was ready to get married, upon which her 'biological father' suddenly appeared to demand for his right "according" to tradition i.e. his share of the dowry. The young woman refused to recognize his right and so he took his case to court. The biological father failed, but only because the young woman was educated and knowledgeable enough to fight him. Culture can be logical.

There are other human rights abuses that can be linked to bride price and the value placed on women. As mentioned above some societies are obsessed with the issue of virginity and place a very high "premium" on this and no thought is spared in the ambition to achieve this status in a daughter and bride. The discovery of a bride not being a virgin is a disgrace to her family. In the East of Nigeria the wedding night is waited for, with very high anticipation, the nuptial bed is laid out in a beautiful "pure" white bed sheet. The night after the mother waits anxiously (probably after a sleepless night) for a "beautifully" stained bed sheet, if this feat has been achieved then she (the mother) ties it proudly around her and dances all over town. If the girl was proved not to be a virgin, then both mother and daughter might face rejection by even their own family... This does not

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<sup>114</sup> Shirkat Gah/WLUML – Women & Law Pakistan Country Project (1996), an action manual Women, Law and Society

happen only in the Ibo family. In some countries in South Asia and the Middle East a girl found not to be a virgin risks being killed, for the shame she brought to the “honour” of the family.

In order to guard against this disgrace, many traditional practises are employed. From the fear of being killed in South Asia, the Middle East and Turkey to other forms of “harmful tradition practises” in Africa such as Female Genital Mutilation (FGM) and Child Marriage. I will attempt to discuss Child Marriage and FGM and how it affects the human rights of girls and women.

**Child marriage** is one of the worst violations of the human rights of the female person. What is child marriage? Child marriage is the marriage of a child. A child is anybody below the age of 18 years. As defined in CEDAW Paragraph 36: “...the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result, their economic activity is restricted.” This practise is most commonly practised in societies that value virginity and discourage female promiscuity. Although Muslims claim that Islam condones this act, they do not get their support, explicitly from the Qur’an, which is the only divine source in Islam, but refer to the “sunna” (practices of the Prophet during his life). Choosing to accept one story of the marriage of the Prophet to Aisha i.e. at the age of 9 and rejecting the stories of her being either 14 or 18 or in her 20’s... these Muslims also choose to ignore the more authentic and accepted story of his daughter Fatima, being married over the age of 20.

For communities who insist on a “virgin” being the ideal wife, it does seem a reasonable option to marry a child, who is least likely to have had any sexual experience or desire to “experiment”. And since all communities accept that puberty is when the sex hormones begin to act and push one into “evil and uncontrollable” behaviour, why not get them married just in time to stop the possibility or even before to make sure there is no margin for error. So we find girls being betroth at birth and are “visitors” in their father’s home till they are old enough to move on; of course the patriarch also decides upon this age. In some cases the girl is sent to live with her in-laws/mother in law and is trained to be a “good” wife. In some cultures in Northern Nigeria it is believed that it is not good for the girl to have three menstruations in her father’s house; all in an attempt to control her sexual expression outside marriage. Society inadvertently legalizes “rape” in these communities. If one looked at the laws of these countries it would be seen that even if the age of marriage is not stipulated, that there is an age at which having sex with a minor is considered as statutory rape. In the penal code of Northern Nigeria sex with a girl below the age of 14 years even within marriage is regarded as rape. But who is going to take the case to court? Societies give up their responsibilities and allow their daughters to be raped all in the name of “honour”.

Where virginity is important, as mentioned above there is a premium paid. A high bride price is given and if the girl is indeed found to be a virgin, then the mother and daughter get even more gifts. And more celebrations are done. I once witnessed a close friend who was found to be a virgin and her groom gave her a car and her mother was visited and thanked for this “greatest of all gifts to a groom”! A girl found not to be a virgin in my community, would be noticed by the lack of gifts visit to her mother.

In some books of Muslim jurisprudence marriage is defined as "aqdun 'ala farjin" (contract on a vagina). And where the wife was “discovered” not to be a virgin, he has a right to ask for the repayment of the “surplus”. And in the Hanbali School of Thought (there are four main schools of thought / jurisprudence in Islam), if the groom “mistakenly” has anal sex with his bride, he would have to pay compensation of the mahr of a virgin, as his punishment for going through the “wrong” way. Jarasimus Mhanna published an edition of writings of the African Muslim poet al-Jahiz (Rasa'il al-Jahiz) and he quoted the second Caliph 'Umar as saying to men: "Marry young virgins: They have perfumed mouths and narrow vaginas...."

The saddest part of child marriage is that it leads to the complete disempowerment of the girl child, which remains with her throughout her life. She is treated like a child/a minor for life. She is passed from one adult to another and is under the shadow of first her father; usually a person so distant and either feared or revered; to a husband who is likely to be much older than her. Even in the case where she escapes marrying a person her father’s age, she is likely to marry someone at least 10 years older than herself. As a child she is not likely to be consulted to make decisions, even those that concern her or her children and once she has not learnt to

challenge from day one, she is unlikely to be able to gain the confidence to do so later. She is expected to do as she is told and will be severely rebuked for expressing her own opinion.

The child bride also faces the immediate risk of being brutally raped by her groom, who must prove his manhood by drawing blood. “The wedding night is the time when the man experiences and proves his virility and when the girl proves her honesty. As Rachid Boujedra writes of his father’s remarriage:

*A fully fledged wedding. The bride was fifteen, my father fifty. A tense wedding. Plenty of blood. The old women were amazed when they washed the sheets, next morning. Tambourines, all night, had drowned the tortures of the flesh torn by the patriarch’s monstrous orgasm... The father was ridiculous and tried to show that he was still up to it: the young men of the tribe had to be silenced. Since he had made up his mind to remarry, he had taken to eating honey with a view to regaining the hormonal vigour of his youth.”*<sup>115</sup> Just imagine what the poor bride went through. Sometimes girls are so badly hurt that they might have to be stitched or even haemorrhage badly enough for hospitalisation or worse still bleed to death. If she does escape death, then she is at the immediate risk of pregnancy.

Statistics show that maternal mortality and morbidity rates are highest in teenage mothers. And also damning are the fact that most teenage mothers are married. It is unfortunately pedalled in communities that practise child marriage that it is “promiscuous” girls that die in childbirth and this is a punishment from God. Unfortunately statistics show that this is not true and married teenage mothers die in greater numbers, as there are larger numbers of them that face the risk of getting pregnant.

“Girls under 15 years are five times more likely to die in childbirth, while those aged 15 – 19 are twice as likely to die in childbirth as a woman in her twenties. In Nigeria, Cameroon and Ethiopia, maternal mortality amongst women under 16 was found to be six times higher than for those aged 20 – 24 years.”<sup>116</sup>

The story of Zeinab illustrates morbidity of a teenage mother. “Zeinab, now 26, was married at 12 years. As a result of giving birth, her left side is paralysed and her husband subsequently abandoned her...”<sup>117</sup>

Other dangers child brides face, especially as a consequence of pregnancy is obstetric fistula i.e. a “damage of her reproductive tract, ruptures in the birth canal – a hole develops between the vagina and the bladder or the rectum or sometimes both. This is caused by obstructed labour, due to an immature birth canal, which weakens after prolonged labour and unavailability or high cost of medical care... fistulas are very devastating... resulting in loss of status, abandonment and life of poverty and misery. The humiliation of living with a constant smell of faeces and or urine leads to social isolation and rejection. Girls who formerly sold food have been known to lose their lively hoods, as their products are considered unclean”<sup>118</sup> It is also the child of this child mother that is likely to die and make up the statistics of high infant mortality and could even be thrown out by her husband and rejected by her own family.

In addition to the risk of becoming a teenage bride, the first night as shown above is usually of brutal rape, which leaves the girl bruised and wounded and if her groom is HIV positive, she is likely to become infected on the very first contact, as direct body fluid will not only be ejaculated into her tender organs, but the bruising would allow immediate access of any virus or STD into her blood system. “Married girls have higher levels of sexual activity than their sexually active unmarried peers; they would certainly have less ability to negotiate safe sex and condom use and also have low power to refuse sex from their husbands. Furthermore married girls are under the pressure to become pregnant”<sup>119</sup> as soon as possible, thus a further reason they cannot dare to bring up the subject of condom use.

Poverty has often been cited as one of the reasons for child marriage, the family is looking to get rid of its daughters, so as to save on the extra mouth to feed. And especially if in exchange they will get a lump sum that

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<sup>115</sup> Abdelwahab Bouhdiba (1975), translated from French by Alan Sheridan and published by Saqi books (1998), *Sexuality in Islam*

<sup>116</sup> Forum on Marriage and the Rights of Women and Girls in collaboration with the IPPF UK(2003), *Early Marriage and Poverty – exploring the links for policy and programme development*

<sup>117</sup> ditto

<sup>118</sup> ditto

<sup>119</sup> ditto



will tide them for some time. Often (maybe now history) the family of the bride would investigate the family of the proposed groom and will only give their daughter if they feel that she will be well looked after, but in poverty stricken communities and families, this is often dispensed with, especially where there is a promise of substantial bride price. It is ironic that societies that practise child marriage because they have “too many mouths to feed” refuse to consider family planning and monogamy.

In poor communities where the girl has to take a dowry, she is often forced into child labour, either hawking food, becoming a nanny or in areas where factories exist, going to work in appalling conditions. Ironically, this sometimes provides an escape from child marriage, but then she is exploited for her wages and is even more marketable i.e. a higher bride price will be demanded, when the family is ready for her to move on/get married. For, she is taking not only a dowry but also her earning power/income, which will belong to her marital family. She continues to live a life of servitude. In situations, where the husband feels that his wife is not submissive enough or that the society will think he cannot control her because she earns money, he can demand she stops working, just to show that he has the power to do so.

In combination with child marriage sometimes you get FGM. FGM is a traditional practise that exists “in parts of Africa and Southeast Asia”<sup>120</sup>. Again going back to societies that value virginity one tends to find these two practises co-existing. In such societies the trauma of sexual intercourse must be excruciating. A double punishment for a child whose sexual organs are still immature and the scars of FGM, an old wound being reopened. The World Health Organization defines FGM as “*all procedures, which involve partial or total removal of the external genitalia or other injury to the female genital organs whether for cultural or any other non-therapeutic reasons.*”<sup>121</sup> In the case where the girl has had clitoridectomy (type 1) or type 1 + the partial or total removal of the labia minora – also known as the lips of the vagina (type 2) or Types 1 + 2 + the total removal of the external genitalia and stitching/narrowing of the vaginal opening called infibulation / pharaonic type/type 3. Her wedding night is a torture and in the case of type 3, the bride would have to be unstitched to allow for penile penetration or the man will have to force himself into her and overtime maybe they will reach a level when it is no longer torture. Girls asked their feelings of sexual intercourse have admitted that they view it with much anxiety and distress. Girls are known to pretend to have their periods or be sick if it will help them escape the torture of sexual intercourse with their husbands.

An “interpretation and one that has transcended time, culture and civilisation, is that FGM ensures virginity, preserves the chastity of a woman and thus maintains family honour (Assad, 1979). Amongst many groups who practise FGM, preservation of virginity is of paramount importance and determines a woman’s position in society. Within some communities, the value of a prospective bride is based on the size of the infibulated opening – the smaller it is, the more valuable her worth” Thus the higher her bride price.

## Conclusion

I would like to conclude by saying that we must understand that bride price is putting material value to a woman i.e. paying money or giving some other value to women. We must see beyond the superficial meanings and difference in all the practises and see the practise of bride price, dowry, sadaq, mahr, bridal wealth etc as all valuing women and making them submissive to their husbands, thus accepting a lower status than that of men. For women to be fully equal to men, we must do away with any practise that supports the continued visualisation of women in the “secondary” position. There must be a total rejection of the use of religion, ethnicity, class and “purity” of a static culture etc that splits women and weaken the struggle for women’s total emancipation.

Practises that continue to undermine women’s total emancipation must be sought out and fought against. Such practises include the religious support of such practises as bride price, child marriage, forced marriage, female genital mutilation, widowhood practises such as the inheritance of widows, women being excluded from inheriting from their parents especially from landed property etc.

The institution of marriage should be that of choice and not of compulsion and women must stop being socialized to believe that it is their salvation. Where even the “kingdom” of God is beyond their reach if they

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<sup>120</sup> Lockhat Haseena (2004), Female genital Mutilation – Treating the Tears

<sup>121</sup> ditto

choose not to marry. Women must not be blamed for all ills of the society, and thus always getting the bad deal every time there is a reason to complain. For example when families are suffering from poverty, it is the girl child that is “sold” into marriage, so as to keep the family going and or if a male member of the family wishes to get married, then it is a little girl that is married off, bride price accepted, in order to get the bride price to marry a wife for the brother or even another wife for the father. The continued devaluation of the girl/woman must be stopped.

### **Action Plan /Strategy**

- 1) Understanding the diverse types of practises and looking at the end result of the practises on the lives of women
- 2) Rejecting all practises that cause harm to women in both the short run and the long run
- 3) Accepting the diversity and thus a need for a diversity of actions and strategies
- 4) A need for mass action and global campaign, thus accepting and tolerating the different paces and length of time this struggle will take
- 5) A need for women to see and accept that this practise is not to their advantage in the long run
- 6) A need to listen and work from the grassroots, because it is something that is so entrenched in our systems that we are blind to it and often do not see it as a problem
- 7) A need to stop looking at the “other” culture and “thanking our stars” that our situation is better
- 8) A need to educate, train and make sure women have the skills to become economically independent,
- 9) A need to change the world fixation that “a woman’s ultimate goal in life must be to get married and ‘nest’
- 10) Muslims in particular should understand that marriage is not a divine requirement in Islam, it is only strongly recommended as it was the practise of the Prophet, so long as one is able to be chaste
- 11) There is a very strong need to remove the power of the institution of religion over our personal lives
- 12) It is prudent to recognize that individual religious leaders and traditional leaders are with “us” and they should be encouraged to work with us as they exert a lot of influence, but we should not be fooled that the institution can be changed, after all it is the corner stone of most patriarchal religions and traditions to subjugate women
- 13) Women must be valued for themselves and not for either their looks, their ability to bring money and material to a marriage or to their family, as men are accepted no matter their capability
- 14) Women must be accepted as capable of contributing to the development of their nation and not only as reproductive machines
- 15) Women’s reproductive functions must be seen and valued as contribution to national growth and adequately compensated for this
- 16) Women’s contribution to the country’s population must not be devalued by using this resource as “fodder for war” i.e. our children (sons included) must not be sent to war, to risk their lives, just so that some war monger will get power and test their “toys”
- 17) Women must not have hurdles placed in their paths in order to make them fail
- 18) Women must be encouraged to achieve their full potential and be able to independently chose the kind of life they want to lead
- 19) Women as partners in a relationship must be part of the decision to have children or not, and the number of children, she must not be put in the position that this blocks all her other potentials, his choice must be between the two couples and not an extended family debate
- 20) An accomplished woman must be able to see her own value other than by what a man is able to pay for her hand in marriage
- 21) There must be an effort to re-educate our communities to stop putting a financial value to their daughters i.e. to stop insisting on “something” being given to a woman to legalize a marriage even if it is token, symbolic, a cheap ring etc.
- 22) Women must not be made to feel that they were a burden for their family and thus something must be “given” in appreciation to their “poor parents”
- 23) “Poor parents” must make sure they do not have too many children to increase their poverty, but just enough to satisfy there “parental” desire to have children
- 24) If the couple getting married decide to give each other presents, that should be their own business and not a prerequisite to a marriage
- 25) Couples must be rational about “gifts” and the government and community must not encourage men to

- demand for these gifts back if the marriage does not go through or if the marriage breaks down
- 26) There is a need to be rational and logical when couples decide on the number of children they want, to reduce poverty the number of children should be limited and then they will not have to marry them off, because they are eating “them” out of pocket and thus poverty will no longer be an excuse for child marriage
  - 27) Explaining that if a family does not accept bride price for its daughter, they will not have to look for bride price to give for someone else’s daughter.

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## WLUML OFFICES:

### **Africa & Middle East Coordination Office BAOBAB for Women's Human Rights**

**PO Box 73630, Victoria Island, Lagos, Nigeria, Email: [baobab@baobabwomen.org](mailto:baobab@baobabwomen.org) and website: [www.baobabwomen.org](http://www.baobabwomen.org)**  
**BAOBAB for Women's Human Rights was formally established in 1996 and is an organisation focusing on women's legal rights under customary, statutory and religious laws in Nigeria.**

**Asia Coordination Office Shirkat Gah Women's Resource Centre** PO Box 5192, Lahore, Pakistan, Email: [sgah@lhr.comsats.net.pk](mailto:sgah@lhr.comsats.net.pk)

Shirkat Gah Women's Resource Centre (SG) was established in 1975 and is a non-hierarchical collective, which works towards women's empowerment for social justice and social justice for women's empowerment. SG focuses on law and status, and women and sustainable development (including reproductive rights). SG is a member of IUCN - The World Conservation Union and has consultative status with ECOSOC.

**International Coordination Office** PO Box 28445, London, N19 5NZ, UK, Email: [run@gn.apc.org](mailto:run@gn.apc.org)  
 The International Coordination Office (ICO) has primary responsibility for ensuring that the relevant people in the Network are meeting, strategizing, planning and it assists in the implementation of the Plan of Action. ICO staff maintain regular contact and communication with the Regional Coordination Offices and share information, ideas, strategies and activities across the Network.

## **HIV and AIDS: Another deterrent to ‘lobola’?**

**A paper presented by: Tinyade Kachika, Women and Law in Southern Africa  
Research and Education Trust (Malawi)**

### **HIV and AIDS: another deterrent to ‘Lobola’?**

#### **INTRODUCTION**

Malawi has two lineage patterns, matrilineal and patrilineal. Most of the ethnic groups in Malawi are matrilineal. The tradition of *Lobola*, a term that represents bride wealth, is practiced in all the ethnic groups in patrilineal societies. A research conducted by WLSA (2002) uncovers that like in many countries in the region, *lobola* symbolizes several factors. Firstly, *lobola* is a symbol of the unification of the man's and woman's families. Secondly, *lobola* symbolises appreciation by the man's side to the woman's parents for bringing up the woman to marriageable age. Thirdly, *lobola* symbolises the physical transfer of the woman from her people, to her husband's people, and the transfer of her reproductive rights and labour (WLSA: 2002:53). Feminist debates and writers all draw one conclusion: ‘the implications of *lobola* lead to the degradation of women, and infringe on their rights to control their own reproductive and productive capacities.’

However, despite this recognition, activists in only a few countries in the region have been bold enough to initiate debates around the tradition. For the rest of our countries, this still seems to be ‘an area where even angels fear to tread’. As a result, even for WLSA, the battle has only stopped at documenting the negative implications of *lobola* on women's rights, but without actually employing activism around the issue. Even as we actively lobby and advocate against issues of domestic violence/violence against women, rarely is the issue of how traditional practices, like *lobola*, legitimise violence confronted.

But today, we may yet have another urgent reason to prompt us to break our silence: the HIV and AIDS epidemic. Thus this paper attempts to say: ‘in our silence, not only are we undermining efforts to curb violence against women across all lineage patterns, but we may also be encouraging a customary practice that can no longer be justified in the wake of the HIV and AIDS epidemic.’ This is particularly relevant for sub-Saharan Africa, which has been hit the worst by the epidemic. This paper therefore challenges us to interrogate the implications of *lobola* within the context of HIV and AIDS, and how the rights of women and children may be impacted. The paper is aimed at generating issues for more research, so that copying and intervention strategies for the epidemic can be better informed.

#### **Why re-examine *lobola* in the context of the HIV and Aids?**

Today, Malawi is one of the countries hardest hit by the HIV and AIDS epidemic. In particular, women and girls between the ages of 15-19 experience very high rates of infection, outnumbering men by four to six times (UNAIDS: 2001). HIV and AIDS has affected people in both lineage patterns in Malawi, and this paper does not in any way attempt to suggest that those in the patrilineal areas are the most affected. At the same time, it is recognised that if left unaddressed, the implications of the tradition of *lobola* can potentially undermine the strategies that are being put in place to address challenges posed by the epidemic. The strategies may also end up being exclusionary of women living under the tradition, particularly those in rural areas.

This paper would therefore like to first examine the issue that *lobola* symbolises the transfer of women's reproductive rights, thus locating the children born in a marriage in the father's family. This signifies that upon the death of the man, the children remain with his kinsmen. In fact, even if the wife does not want to stay at her husband's village, *lobola* requires that the children be left behind. Ostensibly, this may indicate that due to the notion of ‘ownership of the children,’ the extended family provides a strong safety net to the children, particularly after their fathers' death. However, in the context of the HIV and AIDS epidemic, it remains to be investigated whether this arrangement can still be sustained.

Today, as AIDS continues to claim the lives of most adults in prime years across Malawi, communities / clans are significantly shrinking. In fact, for elderly people, it is commonplace to find all or most of their adult children wiped out, leaving only their (orphaned) children behind. It would therefore appear that the social

systems that made it possible to 'take over' children are quickly collapsing. Nevertheless, for patrilineal societies, the rigidity of the *lobola* practice entails that for every grown up male child that dies, his children are still required to remain with his kinsmen/parents as of right. Research would have to be conducted to examine the extent to which shrinking paternal extended families, or grandparents are coping with such pressures. However, the implications of *lobola* even now indicate that it is incumbent upon the shrinking paternal extended family to still do their utmost to see to the survival of the orphans, regardless of their numbers. In a country where almost 65% of people are living beyond the poverty line (National Economic Council: 2000), the consequences of such practices may be catastrophic, both to the families and the orphans. Added to this is the pressure of having to support the surviving spouses, who are also likely to be infected. In fact, the fact that children are not allowed to follow their mother if she opts to go back to her village is likely to make the situation of orphans more critical, considering the rate at which most dependable adults are dying. Indeed, coming from her uncle's funeral (the sole surviving adult), a friend from Rumphi actually lamented that 'what remains back at home is now just a village of children- every single adult is gone.' The rigidity of *lobola* would therefore seem to unnecessarily create traditional barriers to children affected with HIV and AIDS to access alternative care from their maternal relations, thus affecting their well being. Therefore, while it is crucial to investigate the challenges that have been brought by the HIV and AIDS epidemic on the lives of children in both patrilineal and matrilineal areas, the *lobola* implications and their rigidity call for particular and urgent attention.

On another note, HIV and AIDS now challenges us to re-examine the implication that *lobola transfers* the productive rights of women. *Lobola* symbolises that once married, all the matrimonial property exclusively belongs to the husband. Even a wife's own contribution is accredited to her husband (WLSA: 2002). WLSA researchers encountered a stark reality of this position when a group of chiefs supported the following sentiments of one chief: *"even if I had a highly educated daughter, with a very good job- if she gave me anything, the one I would thank would be my son-in-law, because that is his property. If my son-in-law passed away, (and all the property was taken by his people), I would be greatly mourning his death, since for me, I would have lost my only source of support."* (WLSA 2002).

Thus when a husband dies, the wife's property is even subsumed into his estate, and taken over by her in-laws. Further, a recent survey conducted in Malawi in a patrilineal tobacco growing area (Rumphi) uncovered that 'since men own the land, the tobacco permit is registered in their name, and all proceeds go to them. This is despite the fact that the women do most of the work. In fact, men sometimes marry more than one wife, so that these can pool their labour' (Saur et al: 2003). This tradition continues even after the husband dies, with the woman now working for her in-laws. This therefore creates a cycle of dependency, with the women never gaining purchasing power in their own right.

For a woman who is HIV positive, this position raises several concerns. It may mean that every time she falls ill, her ability to access quality health care (usually paid), could at all times be dependent on the good will of her husband. If the husband is already dead, this is again dependent on the good will and means of her in-laws. Further, her ability to sustain a good nutritional status at all times, (which is so crucial to people living with Aids), might also depends on the goodwill, support and understanding of her husband and/or her in-laws. The extent of accessibility of such basic needs and care for widows living with AIDS might have to be investigated. This is particularly pertinent in the light of research findings that 'the women are not encouraged to get any support from their relatives, because doing so is like undermining their husbands. If they get something from their relatives, they are called 'prostitutes'.' (Ngwira et al: 2002).

At the same time, research has established that the transfer of the productive rights of women has, in many cases, led to the ill treatment of most women in respect of whom *lobola* has been paid. 'Most daughter in-laws are treated as slaves by their in-laws. They have no say, and no one to turn to since the village is not their home.' (Saur et al: 2003) It has also been contended that where the husband's family feels that the *lobola* payment was too high, they may take out their frustrations on their in-law (WLSA regional monograph: 2002). Where such unhealthy relationships exist, there is need to find out the extent to which adequate care giving and support is accorded to women (in respect of whom *lobola* has been paid) living with HIV or AIDS.

WLSA research has also established that the implication that *lobola transfers* women's productive rights actually translates to an indirect form of property dispossession of widows when their husbands die (2002).

This becomes more of a reality for a widow who may opt not to stay in her husband's village. For a widow who may be infected with HIV, or living with AIDS, the stress and the state of being destitute that emanate from being dispossessed is more likely to exacerbate their illnesses, leading to their hastened deaths. At the same time, it is realised that due to the prevalence of property dispossession across Malawi, widows in both patrilineal and matrilineal societies are equally at risk. However, the only difference is that in areas that practice *lobola*, such dispossession is guaranteed, due to the terms of the deal that women makes with patriarchy at the time of their marriage.

In Malawi, it has also been established that areas where *lobola* is practiced have high incidences of polygamy, with men marrying up to three wives (Saur et al, 2003). Polygamy has been identified as one of the high-risk practices that perpetuate HIV transmission. And because of the implications of *lobola*, divorce is close to impossible (Kavinya-Chimbiri: 2002). Thus women are likely to find themselves hooked to risky relationships, in which their power to control their bodies is expressly denied by tradition. An example is given of a man who used *lobola* to justify 'his right' to have unprotected sex as he retorted to his wife: 'I paid *lobola* in full, and no cow was deducted to compensate for the use of condoms (WLSA regional monograph: 2002). The polygamy situation, as well as the state of total deprivation of women's rights that *lobola* brings therefore makes the re-examination of the practice urgent, in the light of the HIV and AIDS epidemic.

## CONCLUSION

In the light of the foregoing, it is necessary that strategies to address the HIV and AIDS epidemic should be bold enough to even challenge entrenched customs that are, to many people, a way of life. In Malawi, the National Behavioural Change Interventions Strategy for HIV and AIDS/SRH (NAC/MOH: 2002) identifies the elimination of high-risk cultural practices as a critical area to be addressed. Harmful cultural practices are defined as "any traditional cultural practices which are deemed to be dangerous to the health and well being of individuals and communities (Deutsch: 2003). However, so far, focus in Malawi would appear to be limited to 'conventional' forms of harmful practices, i.e. the girls' post-initiation practice of *kuchotsa fumbi* (removing dust- by sleeping with a man); *fisi* (hired sexual partner); *kulowa kufa* (widow inheritance); dry sex etc. However, this paper has exposed some of the potential risks of *lobola* to the health and well being of women and children, in the context of HIV and AIDS. Thus in order to make strategic interventions aimed at addressing the epidemic all-encompassing, it is crucial that the focus areas for high risk cultural practices be broaden, so as to include potentially risky, and yet unspoken traditional practices like *lobola*.

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# **Lobola in Southern Africa: its implications for women's reproductive rights**

**Findings of a desk study conducted by Women and Law in Southern Africa Research and Education Trust (WLSA)**

**Presented at the International Conference on Bride Price in Uganda by:  
Tinyade Kachika (WLSA-Malawi)**

**February 2004 *Lobola in Southern Africa: its implications for women's reproductive rights***

## **INTRODUCTION**

Women and Law in Southern Africa Research and Education Trust (WLSA) is an NGO operating in seven countries in Southern Africa. Its mission is to uplift the socio-legal status of women in Southern Africa. In 2002, WLSA conducted a desk study on the practice of *lobola* within the seven WLSA countries of Botswana, Lesotho, Mozambique, Malawi, Swaziland, Zambia, and Zimbabwe.

This paper highlights the findings of the study, which have been published in a monograph. The findings analyse the concept of *lobola*, and its implications for women's rights, particularly sexual and reproductive rights (highlighted under Box 1). Further, the findings generally expose how the commercialisation of *lobola* has stripped it of its symbolism, and reduced it to yet another way of controlling women's reproductive rights.

### **Box 1**

#### **Women's sexual and reproductive rights**

- The right to health, reproductive health, and family planning.
- The right to decide the number and spacing of children.
- The right to marry and found a family.
- The right to life, liberty, and security.
- The right to be free from gender discrimination.
- The right to be free from sexual assault and exploitation.
- The right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment.
- The right to modify customs that discriminate against women.
- The right to privacy.
- The right to enjoy scientific progress, and to consent to experimentation.

## **Current *Lobola* practices in the seven WLSA countries**

*Lobola*, though called by different names, is a practice that is common in all the seven WLSA countries. *Lobola* usually precedes the formation of a marriage. However, because Southern Africa is characterised by multi ethnic, multi-cultural, multi-lineage, and multi-racial diversity, the importance of *lobola* in determining the existence of a marriage differs in the seven countries from one ethnic grouping to another, and from family to family. Further, the tradition of *lobola* is highly prevalent in countries that are largely patrilineal, as opposed to those that are largely matrilineal. However, a contrast is found in Zambia, where *lobola* is also practiced amongst certain matrilineal groups. Of the seven WLSA countries, Zambia, Malawi, and Mozambique are dominated by matrilineal ethnic groups, whereas Botswana, Lesotho, Swaziland, and Zimbabwe are characterised by patrilineality.

The study reveals that in all seven countries, the practice is comprised essentially of two parts. The first one is the *introductory ceremony*, consisting of small payments, or an exchange of gifts that mark the beginning of the marriage process. Such gifts are usually non-refundable. The second one is the *main ceremony*, where major, non-refundable payments are made.

### **i. Introductory ceremony**

The implications and meanings of these small payments vary from country to country, and from one ethnic grouping to another.

- For the Tumbuka of Malawi and Zimbabwe, the small payments allows the bride groom's party to open negotiations.
- Amongst the Tumbuka of Malawi and the Ngoni of Zambia, there is another payment for betrothal, which binds someone with a promise to marry. In Malawi, this is usually in form of money and material gifts such as beads. It is an outright gift, and not refundable. Among its implications, betrothal does not confer on the parties the right of cohabitation, and should they have sexual intercourse, the



bride's father may claim compensation. The man betrothed to the girl is also entitled to recover compensation from a third party that may make the girl pregnant.

- In Lesotho, the process starts with the bride groom asking for the woman's hand in marriage from her parents. Among the Tonga of Zambia, the process starts with the process of taking the bride away. These ceremonies are signified with the payment of an animal, or tobacco. The significance of such initial exchanges is that the husband declares an interest in the future wife.
- Among the Tsonga of Mozambique, the initial step is for the bride groom's emissary to ask for water, representing the nurturing role of women. Similarly, among the Tswana of Botswana, the bride groom's party first asks for a water gourd. After such exchange, the bridegroom's party is required to give gifts for the bride, her mother, her aunts, her father and her uncles.

## **ii. The main ceremony**

In the seven WLSA countries, there are both similarities and differences in the composition of the main *lobola* ceremony. Similarities include the payments for the bride's mother, father; and the transfer of a woman's reproductive capacity to the man's family (except amongst the matrilineal Bemba and Tonga of Zambia). The differences lie in what validates a marriage.

- For the Swazi's, the main ceremony comprises 3 cattle. One cow transfers the girl's procreative functions; the other is given as an appreciative gift to the girl's mother, and the third one is given to the father to protect the girl, in case the marriage fails. In some instances, additional cattle would be paid if the girl was a virgin. However, the main *lobola* consists of a minimum of 12 cattle, 10 being the father's, and two the mother's. At the same time, it should be noted that for the Swazi, *lobola* does not validate a marriage, the smearing of the girl with red ochre does.
- For the Tsonga of Mozambique, the main *lobola* exchange is in form of cattle, the exact number of which is subject to negotiation.
- Among the Shona of Zimbabwe, the main payment of 4-10 cattle is referred to as 'the father's cattle.' However, it is possible to pay cash at a negotiated price per beast. Among the Ndebele of Zimbabwe, this consists of 10 herd of cattle, which are only transferred when 2 to 3 children are born. For both ethnic groups, clothes for the bride's parents also constitute an important part of the *lobola*.
- Among the Ngoni of Zambia, *lobola* consists of anything from 1 to 12 cattle.
- Among the Tumbuka of Malawi, an amount of money, called *chuma* forms the final payment. The amount paid is determined by what the men in the family consider reasonable. Among the Tonga of Zambia, a similar payment is made. However, the only difference is that for the Tonga, *lobola* does not transfer the reproductive capacity of women.

## **Implications of *lobola* for women's rights**

The monograph examines the issue of how *lobola* impacts on women's rights within the context of personhood, bodily integrity, commoditization of women; and violence against women. At the same time, it is worthy noting that all four concepts are inter-linked.

### **1. *Lobola* compromises women's personhood**

The monograph endorses the significance of linking human rights to personhood. The principle of personhood as understood in the context of women implies that women should be considered as principle actors and decision makers in matters of reproduction and sexuality. In other words, women have to be considered as subjects and not mere objects.

The implications of *lobola* greatly undermine the principle of personhood. When *lobola* has been transferred, decisions relating to reproductive and sexual rights are transferred to the husband and his family. In the WLSA countries, the transfer of reproductive rights is validated / signified differently. For instance, among the Ngoni of Zambia, the permanent transfer of a woman's fertility to a man's group is validated by the mere transfer of

cattle, and made permanent by the birth of children. In Lesotho, one of the cattle transferred is specifically referred to as *khomo ea seboko*- ‘ a cattle that transfers the procreative functions of the woman to the family or clan of her husband.’ Thus the husband and her family control decisions relating to the number of children the woman should have, when, and whether to have them at all.

In Botswana for example, a woman in respect of whom *lobola* has been paid has no say in the number of children they want. In Mozambique, there is an expectation that the woman will continue bearing children until all the children in her belly have come out. In Malawi, Mozambique, Swaziland, and Lesotho, a woman is pressurised to produce a large number of children, particularly male children. This prevailing patriarchal attitude that a woman will be dictated upon as to when to produce children, and as to how many, just because *lobola* has been paid for her signify the absence of respect for the personhood of the female in such societies.

Further, *lobola* implications demand that an unproductive womb be substituted by a productive one. This usually happens without consulting the woman involved, which is a gross violation of her personhood.

The findings also reveal that in some situations, the state contributes to the woman’s loss of personhood through policies. For example, in the WLSA countries, states take decisions about fertility control exclusively for population control purposes. This is as opposed to formulating such decisions for purposes of empowering women to take decisions as subjects. Thus women are merely used as objects, and this violates their personhood.

## **2. Lobola violates women’s bodily integrity**

The concept of bodily integrity means the right (for women) to security, and control over their bodies. This is also closely linked to the right of personhood.

Bodily integrity forms the essence of women’s sexual and reproductive freedom. One of the ways in which *lobola* violates women’s integrity is the denial for women to use family planning methods. For instance, in Swaziland, clinics used to require the husband’s consent before they could give contraceptives. In Lesotho, Zimbabwe, and Botswana, situations exist where a wife cannot use contraceptives if the husband does not consent. In Zimbabwe, it has been reported that one woman was even murdered by her husband when she was discovered to be taking oral contraceptives.

The violation of bodily integrity means that not only does a woman lose control over her reproduction, she also loses control over her body and her health. Such situations gives the husband the right to decide whether she lives or dies- i.e. if the husband has to decide whether she stops reproducing or not (even when her health is at risk); or if she has to be operated on or not.

Generally, the findings uncover that the violation of women’s bodily integrity manifests itself through: the absence of the right to use family planning; the commoditisation of women; and violence against women.

## **3. Lobola commodifies women**

The study reveals that the significance of *lobola* as a women’s rights issue derives from women often being excluded from the process of negotiations and exchange. Most importantly, the bride is not always consulted on whether she consents to the process of *lobola*. This lack of consultation and choice has adverse effects for perceiving women as commodities. The process of *lobola* negotiations and renegotiations can be equated with bargaining. The sense of value placed on women in this process of negotiation equates them with commodities on the market.

For instance, women are treated as commodities for which the purchase price can be reduced when they are regarded as imperfect. For instance, *lobola* may be pegged at certain levels depending on whether or not the woman is a virgin. Among the Swazi of Swaziland, the Ngoni of Zambia, and the Shona of Zimbabwe, virginity was a commodity that was treasured and guarded by her father, which he passed on to her husband at marriage. So if a man was found to have had sexual intercourse with a girl before marriage, damages could be awarded to a father based on the claim that ‘she would be given away as ‘damaged’ on marriage, and would therefore not attract much *lobola*.

The commoditization of women is also symbolised through the pegging of cattle to the issue of children. For instance, in Lesotho, the number of cattle paid must be more than 6 for a man to gain rights over children as well. In Mozambique, a non-specified down payment is made to the bride's parents, and the full amount becomes due when her procreative capacity is proved. On the other hand, under the Ndebele practice in Zimbabwe, the usual charge is 10 herds of cattle for 10 children. Further, such cattle are only transferred when 2 to 3 children are born. Thus in most of the WLSA countries, failure to procreate may end in a woman being returned to her natal family, and the lobola being demanded back.

The contention that *lobola* commodifies women also gets validated through a case in Lesotho, whereby a woman for whom *lobola* had been paid got separated from her husband for more than 20 years. When she died, her former husband successfully claimed the right to bury her, even though she died living with, or had children with another man.

Further, commoditisation is evident through practices in Botswana, where a man who has not finished paying *lobola* is not allowed to participate in negotiations for his daughter's marriage unless he immediately pays the *lobola* for the girl's mother. In Swaziland and Malawi, the father is not allowed to 'buy' the child if he has not paid *lobola*. Thus he pays two beasts for a girl-child, and one for a boy child, and this gives him the rights of guardianship. In Zimbabwe, *lobola* for a daughter may actually be claimed as *lobola* for the mother. Thus the *lobola* may be paid to the girl's grandfather, and not her father, to compensate for the *lobola* which the grandfather did not receive for his own daughter.

#### **4. Lobola legalises violence against women**

Closely linked to the preceding three issues of personhood, bodily integrity, and the commoditisation of women is the issue of violence against women. The study found that because of its refundable nature, *lobola* binds a woman to stay in an abusive marriage both as a duty, and a form of protection to her natal family.

Thus *Lobola* erodes the protection that a woman may get from her natal family. Usually, the natal families may have already used up the *lobola*, thus any complaints by the woman in respect of her marriage is viewed like a threat to their economic security. For some families, violence may give the natal family the incentive to demand any outstanding balance of the *lobola* - so that the violence can be 'justified'. In Zimbabwe, in a situation where a wife was killed by the husband, *lobola* was demanded posthumously, otherwise the woman's family threatened not to participate in her burial.

The study also reveals that the realities of the implications of *lobola* negate the general assertion that *lobola* preserves marriages. *Lobola* seems to permanently tie a woman against her will without improving the relationship. In most cases, the men will go ahead and marry other women, without necessarily divorcing the other one. The existence of marriage in theory seems to give perpetual rights to the man, who may continue to harass the woman long after they have separated. This may include forcing her to have sexual relations with him, or beating her for having sex with another man.

The implication that *lobola* transfers the productive rights of women also qualifies as a form of economic and emotional abuse against women. In Zimbabwe, case law endorses this abuse, with the Court once determining that 'property acquired during a marriage becomes the husband's property, whether acquired by him or his wife.' However, the reality is that as a result of economic structural adjustment programmes and other economic challenges, retrenchment of men is forcing women to seek employment or engage in informal trading. The system of marriage which denies them the right to property in their own capacity is labelled as economic discrimination. This disempowerment leaves her vulnerable to negotiate her sexuality and safe sex, and her reproductive health rights.

Further, it has been established that in itself, *lobola* retards a woman's negotiating power, and has been used (by men) as a justification for a man's right to have unprotected sex with his wife. In Botswana, it has been reported that one woman was severely beaten, and suffered rape when she suggested condom use, which saw the man retorting: 'I paid *lobola* in full, and no cow was deducted to compensate for the use of condoms'

The study also establishes that *lobola* has the potential of extending (sexual) abuse to other female members of the woman's natal family. For instance, failure by a woman to procreate mostly implies that another female from her family should substitute her reproductive functions.

Further, the implication of lobola that guardianship of children vests exclusively in the husband and his family sometimes forces women to remain in abusive relationships in order to protect the interests of their children.

## **Recommendations**

1. Southern Africa needs to pay considerable attention to the development and future of customary law, and rid itself of some of the negative consequences for women. *Lobola* should therefore not be a determinant of the validity or otherwise of any marriage.
2. Marriage systems should be unified into one general law that would apply to every marriage.
3. Customary law should be reconciled with some of the progressive legislation/Constitutions that give women equal rights with men. For instance, in Zimbabwe, in the event of a divorce from a customary registered marriage, a woman is entitled to a share of the property under the Matrimonial Causes Act. Where such marriage is unregistered, she can still claim part of the property on the basis of a universal partnership. In Malawi, the Constitution invalidates any customary law that is in conflict with modern democratic principles, including equality.
4. *Lobola* should be abolished to take away the ‘purchase power’ perception tied to the practice that gives men repressive power over women. In turn, this exacerbates gender based violence against women and children.
5. Advocacy for the abolition of *lobola* should include the sensitisation of entire nations and the region on the implications of *lobola* for women.
6. Advocacy around issues of marriage should be carried out. This should include information on different marriage regimes, and the implications for each regime.
7. The seven WLSA countries should adopt effective means and measures to promote and fulfil the reproductive rights of women and men, and address practices that perpetuate gender inequalities such as *lobola*.

## **Areas of Action**

1. Many women’s lives are influenced more by living law, than by state law. This means taking a more holistic approach that aims not only at changing state laws but also at influencing living laws.
2. Any changes in state or living law should not leave women isolated, vulnerable, and even poorer. Thus there is need to target the power structures in the family that leave women at the bottom of the hierarchy.
3. The issue of *lobola* is one in which the role of the state is weak, yet it would be easy for the state to strengthen women’s control over their reproduction by adopting policies and laws to help women achieve this.
4. Women can advocate for transformative approaches that seek to change gender roles and create more gender-equitable relationships, i.e. debates that question the validity and relevance of cultural practices like *lobola*.
5. Effective legislation should be introduced and implemented against gender based violence.
6. Social and judicial action is needed to combat gender based violence, including sexual abuse and domestic violence.

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# **PSYCHOLOGICAL EFFECTS AND IMPACT OF BRIDE PRICE**

**Presented by: Dr. Catherine Keko**

**Domestic Violence Health Officer**

**The Mifumi Project Box 274, Tororo – Uganda Email: Mifumi@mifumi.org**

## **CULTURAL MEANING**

Bride price is seen as a process of marriage.

It is the only type of marriage many homes know of.

Many women think they are valued when bride price is paid.

Bride is transferred culturally to another home.

Witness from both homes come for the ceremony and they are known as married.

## **MARRIAGE IN THE CHURCH**

With the coming of the missionaries, education and religions, teachings on what marriage is taught.

But families still work up both types of marriages, church and traditional marriages.

Few families reach the church because they think a church wedding is expensive but no, it is important.

Some think that culture links the marriage better than the church.

## **CHURCH WEDDING VS TRADITIONAL MARRIAGE**

### **Church marriage**

- Educated men and women tend to marry in the church
- Marriage in church has a meaning for them
- Bride Price has less meaning as marriage
- They value the marriage as seen by God
- It is witnessed by the priest and church and both families
- Seen as the main marriage
- It is important for the educated men and women

### **Traditional marriage**

- Has links with culture
- Families are brought up knowing bride price is important
- Women are valued as bride price and to be returned when the marriage breaks up
- Witnessed by the chiefs, community and both families
- Main marriage and churches wedding is secondary
- Traditional marriage is important to them.

### **Effects/Impact of Bride Price**

- Women are regarded as property at the man's home
- Treated badly and used as labour force because bride price has been paid
- Threatened if they do any thing wrong, they are sent to their families and bride price has to be returned
- Women have symbol of the cow in their image
- Men can look at women as the bride price they paid for
- They fear leaving the home when they are beaten because bride price has to be returned
- Women can be severely beaten because of strong emphasis being linked with bride price compared to the real value of marriage
- They can be subdued and intimidated by being valued as bride price paid for and you treat, as you like
- Oppression of other value of women takes place like no education for the girls
- Women have no rights, and this is not realized by the majority of women.

# **BRIDE PRICE AND ITS IMPACT ON STI/HIV/AIDS PREVENTION AND PROTECTION OF SEXUAL REPRODUCTIVE HEALTH/RIGHTS: UGANDA RURAL WOMAN'S EXPERIENCE**

**By: Norah Kwoba,  
Executive Director  
Bukedi Development Foundation  
P. O. Box 1126  
Tororo - Uganda  
E-Mail: [bude@yahoo.com](mailto:bude@yahoo.com)**

## **INTRODUCTION**

The tradition of Bride Price is still practiced in many parts of Uganda and has left many women powerless with no control over their Sexual Reproductive Health/Rights and vulnerable to STI/HIV/AIDS. The practice of this tradition results in the infringement of several human rights such as the right to the highest attainable standard of physical and mental health, the right to life, liberty, the right to marry and found a family, the right to freedom from customs that discriminate against women and the right of sexual non discrimination (Economic, social and cultural covenants, UDHR, CEDAW, Uganda Constitution 1995).

In this paper, I am mainly basing my discussion on a rural Uganda woman who doesn't know that she has rights which are protected by the constitution or international treaties ratified by Uganda, she has been confronted with subordinate situations generally in all spheres of her life and held captive to her reproductive norms.

Let me begin by defining and highlighting these major terms in the topic; Bride Price. Sexual Reproductive Health/Rights and STI/HIV/AIDS and Rural Woman.

**BRIDE PRICE:** This is a package a man pays to the parents/guardians of a girl/young woman intending to get married. Once this is paid, a woman becomes the "Property of the man - husband" and is controlled by the "man - husband." It is refundable in case of divorce/separation.

**STI:** Is mainly an infection, which is transmitted through sexual relationship and usually affects the reproductive organs if not diagnosed and treated early.

**HIV/AIDS:** This is a concept known by even children. Its main transmission is through sexual relationship and damages the cells (White Blood Cells), which protect the body leaving one prone to any disease. HIV is the virus, which causes AIDS.

**SEXUAL REPRODUCTIVE HEALTH:** Implies that men and women have the ability to reproduce, regulate their fertility, practice and enjoy sexual relationship. It further implies that reproduction is carried to a successful outcome through infant and child survival, growth and healthy development and that women go safely through pregnancy and childbirth. WHO (1993).

**REPRODUCTIVE RIGHTS:** Is defined as legal categories generally used to express the principles that women and men as well, are entitled to control their reproductive life (Lynn Freedman & Stephen Isaacs 1993).

Women's reproductive rights violations are rooted deeply in the family system bolstered by community norms of male privilege and frequently justified by religious doctrines or appeals to customs and traditions.

**RURAL WOMAN:** That woman who lives in a set up (community) where access to available developmental facilities and services are difficult.

This woman is kept in cultural subordination which puts her in such a low bargaining position that she has little, if any, control over decisions which affect her bodily integrity. She has not been permitted to make her own reproductive choices because a man has paid Bride Price.

Almost 90% of the Ugandan population lives in the rural area majority of who are women. I am sure we all know (if not imagine) for example how a rural woman faces various difficulties especially in regard to seeking reproductive health information and services.

The available data indicates that maternal mortality rate is currently estimated at 5% and average number of childbirth in each woman's life is 7. Men other than women determine when to have sex, another child and whether to use contraceptives. Women are therefore vulnerable to STI/HIV/AIDS because they can neither refuse sex to their husband nor easily suggest safe sexual practices an important risk factor in contracting HIV infection.

This paper therefore presents the implicit issues pertaining the Bride Price, Sexual Reproductive Health/Rights and STI/HIV/AIDS of the rural Ugandan woman.

I hope I am not radical by choosing to discuss Bride Price, Sexual Reproductive Health/Rights and STI/HIV/AIDS issues of a Ugandan rural woman as Fiske (1992) put it that whenever women try to address issues affecting them, they are said to be too radical. Often times the reports I have read either in Newspapers or other documents have never critically brought out the impact of Bride Price on Sexual Reproductive Health/Rights protection and STI/HIV/AIDS prevention on women.

To help us conceptualise this complex issue, three case studies of rural women are summarised below.

Nyafwono aged 40 died in mid 1998, childless, after her father forced her into marriage at the age of 15.

Nyafwono's father was a poor rural man with 12 children and Nyafwono was the second child and the first girl. In the village lived a rich man who was working in Soroti. One weekend the man came back to the village and met Nyafwono's father in a drinking club. Nyafwono's father explained how his daughter had matured and was worried about her future. He wanted someone to marry her off so that he can educate other children. This rich man showed interest and asked Nyafwono's father if they could meet the following day and finalize the issue.

After one month Nyafwono was surprised when she was told by her father that she was going to be married off to this rich man. Nyafwono tried to resist but was threatened by her father. The following Saturday Nyafwono was married off and the father pocketed 5 heads of cattle, six goats and other items as per the customary demand.

Six months in marriage Nyafwono started feeling pain in her stomach and abdomen, which was caused by STI. In the hospital the diagnosis recommended an operation as the only solution. After the operation Nyafwono was advised to abstain from sex for at least six months but when she discussed this with her husband, the man refused and said that he had not got any profit from the wealth he gave to her father and in any case sex was the only binding factor if there was no child. Nyafwono was forced into sex and there were complications (discharge), which permanently damaged her reproductive system. From this damage Nyafwono could not give birth and of course the husband could not stay with her without a child. She was chased back to her father and the man demanded for the Bride Price he had paid. Since the Bride Price had been "eaten", Nyafwono's father could not allow her back. For sometime Nyafwono stayed with her husband but under severe brutal violence. She was beaten every day until she decided to escape and rented in one of the small towns in Busoga. With the permanent damage, Nyafwono did not live for long and died in the hands of friends all in the name of Bride Price.

Nasike got married at the age of 17 and was the first in a polygamous marriage of four co-wives. When she realised that her condition was deteriorating, she decided to go for family planning without informing her husband. By then she already had four children. When the husband saw no fifth child coming, he became suspicious and asked Nasike why she was not conceiving. Nasike in reply explained that she was unable to carry another pregnancy and therefore opted for pills. This was enough to earn her severe beatings and was told



to go back to her parents or pay the Bride Price. Nasike could not stand the violence and decided to go back to her parents.

On reaching home, the brother who had used the Bride Price for marrying his wife, chased her back and told her she was now too old to come back home because no any other man would get interested in her and in any case he had used the bride price to marry his wife.

On going back to her husband she conceived the fifth child and when she went for voluntary counselling and testing, she was found to be HIV positive. This time she could not tell the husband and when she gave birth, both the child and herself became sickly. Nasike died six months later and the child died two weeks later, all in the name of Bride Price.

Nakirya aged 29, fled her home in 2002 with her three children. They walked a distance of over 100km to find a place where to settle. When she was asked why she fled her home, she revealed that it was very violent and abusive. Her life and that of the children was in a great danger she recalled. She narrated the various traumatic experiences, which she could not disclose just for the sake of her three children. When asked why she could not take any legal action against her abusive husband, she revealed that all she was advised was to leave the area with her three children since her father would not refund the Bride Price.

The (UNDP 1998, p. 2) report indicated that domestic violence, an often hidden and universal scourge causes physical and persistent mental suffering disrupts women's lives and blocks their personal growth and participation in society.

Wallace (1991, p.2) further argued that women frequently suffered from stress and were alone as household heads for the first time, many being pregnant and have small children.

Nakirya now lives with her children in one of the low income grass thatched houses in one of the trading centres in Pallisa District, the oldest child who is now six years old does not go to school much as she should be enrolled for free primary education (UPE). This is because she has to look after the young siblings when the mother is out to the rice processing industry most of the day.

At the rice processing industry she re-threshes the rice husks disposed so that she can at least get what is enough for the children. During off-season for rice harvest, her condition becomes worse and in some instances she has resorted to prostitution as a source of income.

Nakirya laments over her condition, which has been largely due to Bride Price, but argues that she is ready to do anything so that her children can survive. She complained of feeling overwhelmed by her responsibilities since she had to take the burden of caring for the children with no other support.

From the case studies, it is clear women are exposed to various reproductive health issues. Resorting to prostitution also exposes them to various reproductive health issues such as sexually transmitted infections including HIV/AIDS all in the name of Bride Price.

## **Conclusion:**

I have presented this paper basing on three case studies all from the rural Ugandan experienced women. I have urged that Bride Price further contributes to various reproductive health hazards which women face. And also urged, women face unique reproductive health threats, high roles of preventable illness and deaths from complications in pregnancy and childbirth, sexually transmitted diseases and HIV/AIDS.

Yet the health needs are paid little heed because the voices are rarely heard in policy circles. They rarely can shape the answers to questions of relevance to the health in a large part because they are under represented in politics and in the national and international bodies charged with safe guarding health.

For example, when some women opt for illegal practices such as prostitution, in order to secure for themselves and their children for the basic necessities such as food, shelter and clothing, they are exposed to sexually transmitted diseases such as HIV/AIDS and are charged with being idle and disorderly in Courts of Law.

Cultural beliefs play a big role in hampering the fight against discrimination between women and men. In the rural areas women have been groomed to accept their positions in the kitchen and think of it as a foreign ideology for women to discuss issues of their reproductive life which can only be accommodated by Europeans and not African men.

In all Ugandan communities women are subjected to inequalities in laws and in virtually all spheres. Traditional cultural practices and beliefs that are detrimental to women continue to exist. Fortunately there is now in place a government, which is committed to eradicating all forms of imbalances and raising the status of women. With the continued policy of women empowerment the future is bright for the women in Uganda.

Let me raise some questions on this regard:

Where is the Domestic Relations Law?

How many rural women know their rights?

Do we still need Bride Price?

I would like to take this opportunity to thank Mifumi Project for the marvellous work they have done towards empowerment of the rural woman. My sincere appreciation further goes to TASO and FIDA for extending their services to the rural areas and to all of you who are struggling for Gender Equality and Equity.

#### **Recommendations:**

- Advocate for the enactment of Domestic Relations Bill.
- Parliament must move fast to repeal all legislations that demean women and fail their constitutional rights.
- Rural women should be sensitised about their rights.
- Vigorous sensitisation on reproductive health/rights
- Advocate for women's reproductive autonomy.

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# MAKERERE UNIVERSITY KAMPALA

## INNOVATIONS AROUND THE WORLD ON HARMFUL SOCIO-CULTURAL PRACTICES

**BY: EVA LUSWATA-KAWUMA**

**(Post Graduate Diploma Women's Law) (UZ – Harare) LLM in Human Rights and Democratisation in Africa (Pretoria)**

### INTRODUCTION

#### 3.3 A Brief Background

It cannot be denied that the global feminist movement has made considerable progress in increasing the visibility of women and the fact that their rights are an integral part of globally accepted human rights. Chen has in that vein noted that

*“the efforts of women advocates have forced the international community to understand that not only do women have human rights, but these rights are not beyond the reach of the growing number of human rights mechanisms and programs set up by international and national institutions”.*<sup>122</sup>

Indeed human rights of women at the international and global level has attracted considerable interest to the extent that non discrimination is the single theme characterizing all major post World War II human rights instruments. Unfortunately, this has not necessarily resulted into better lives for women and years on, the reality of most categories of women is more likely to be characterized by the continued existence of deep rooted systems that support their subordination and oppression across the globe.

In some parts of the world, women's subordination has taken the form of a host of oppressive and inhumane practices, that do violence to women's bodily integrity, and human dignity. Many of these have been dressed and justified in cultural and religious terms and include female genital mutilation (FGM), widowhood rites (usually wife inheritance), child marriages, polygamy and the payment of bride price.

The degenerating situation of women has heightened the concerted effort of the feminist movement and a host of other international human rights personalities and bodies to devise ways of combating harmful socio-cultural practices in order to improve the lives of women. Such innovations have come in the form of both legal, quasi-legal and extra-legal mechanisms, mostly developed to suit existing and emerging social and geo-political frameworks in different parts of the globe.

For reasons of time and space, this paper cannot comprehensively exhaust all innovations around the world. It instead discusses international innovations with emphasis on regional efforts in Africa. The latter is chosen because it is within Africa (and Asia) that the discussed practices are most prevalent. The researcher also believes that a discussion of the problem in Africa will be the most relevant to this conference.

#### 3.4 Brief Definitions and Extent of the Problem

FGM is the name given to the surgical operation in which part, or all, of the external female genitals are removed; It is also known as female circumcision and may have been in existence in Africa 2000 years ago. Those who denounce FGM say that it is a violent human rights abuse against women, while proponents say that it is an important cultural and religious tradition that must be preserved.<sup>123</sup>

<sup>122</sup> Chen “Engineering World Conferences: the International Women's Movement and the UN” in Weiss & Gordenker (eds) ‘The UN and Global Governance’ (1996) 139.

<sup>123</sup> The fact that FGM is an accepted Islamic ritual is still controversial. Some verses of the Qur'an have contradicted it. FGM was also a practice by Falasha (Ethiopian Jews) as a religious practice.

It is estimated that 80 to 150 million females usually between the ages of four and twelve around the world have undergone FGM, and at present there are some two million girls at risk each year. The practice occurs in Africa, the Middle East, parts of Asia and in immigrant communities in Europe and North America.<sup>124</sup> In its mildest form, the clitoris is partially or totally removed. In the most extreme form, called infibulations (pharonic circumcision), the clitoris, labia minora, labia majora, and the urethral and vaginal openings are cut away. The vagina is then stitched or held together, leaving a small opening for menstruation and urination. Cutting and re-stitching may be necessary for childbirth and sexual intercourse.<sup>125</sup>

The operation is commonly performed by untrained practitioners, with no form of aesthetic, and cutting instruments include broken glass, tin lids, scissors, or unsterilised razors. In addition to causing intense pain, the procedure carries with it a number of health risks such as pelvic infections, pain, shock, haemorrhaging, obstructed child labour, and the spread of HIV. Infibulation can have even more serious long-term effects: like chronic urinary tract infections, stones in the bladder and urethra, kidney damage, reproductive tract infections resulting from obstructed menstrual flow, pelvic infections, infertility, excessive scar tissue, keloids (raised, irregularly shaped, progressively enlarging scars) and dermoid cysts.<sup>126</sup>

First sexual intercourse can only take place after gradual and painful dilation of the opening left after mutilation. In some cases, cutting is necessary before intercourse can take place. In one study carried out in Sudan, 15% of women interviewed reported that cutting was necessary before penetration could be achieved. Some new wives are seriously damaged by unskilled cutting carried out by their husbands. A possible additional problem resulting from all types of female genital mutilation is that lasting damage to the genital area can increase the risk of HIV transmission during intercourse.<sup>127</sup> In addition to the physical scars, women who have undergone FGM suffer serious psychological life long trauma which can be life threatening.

Polygamy, the practice of a man having more than one wife is likewise a deeply entrenched cultural and religious practice in many parts of the world. In certain parts of Africa, polygamy is sanctioned by law as an acceptable cultural practice. Interestingly, polygamous unions in Britain and the United States are not considered a crime (for as long as the marriages are not registered which would amount to bigamy).<sup>128</sup> Polygamous unions in Islam are allowed by the Qur'an and practiced throughout the Islamic world although only four wives and less are allowed.

Many jurisdictions have set majority age at 18 years meaning that everyone below that age is deemed to be a child. Marriages of children as young as eight years have been reported in Africa and such marriages together with the custom of the payment of bride price or bride wealth are widely practiced in Africa and Asia. For example, a new report by UNICEF documents that millions of children, mostly girls suffer from the practice of child marriages. African children are the most affected with over 70 percent of girls aged 15-19 in Congo Kinshasa and Niger and over 50 percent in Uganda, Mali and Congo Brazzaville. Child marriages are still very popular in India and Sri-Lanka with hundreds of children, some as young as three years old being married off by their parents during Hindu religious festivals.<sup>129</sup>

Widow inheritance is still prevalent in Africa. For example it is still well followed by the Luo of Western Kenya, the Bakiga in Uganda, and many tribes in Western Africa.

### **3.5 Harmful Socio-Cultural Practices as a Human Rights Issue**

The prevalence of these practices and the fact that women and not men are the victims of these horrendous practices signify the discriminatory institutions in which they are entrenched. Further, the full range of these horrendous practices are meant to enhance the dominant position of men (over women), and exemplify the

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<sup>124</sup> Hosken P 'Female Genital Mutilation' at ><http://www.feminist.com/resources/artspeech/inter/fgm.htm><

<sup>125</sup> Female Genital Mutilation, UN initiatives at > <http://www.amnesty.org/alilib/incam/femgen/fgm7.htm><

<sup>126</sup> As in No. 4 above)

<sup>127</sup> (As in No. 3 above)

<sup>128</sup> Women in Development Network (WIDNET) at ><http://www.focusintl.com.statrla.htm#006><.

<sup>129</sup> Nikki Katz "Women's Issues at ><http://womenissues.about.com/is/childrenmarriages>

unequal power relations between the sexes prevalent in partial societies around the world, especially in Africa and Asia.

For example some of the reasons advanced in favour of FGM are that it will reduce a women's desire for sex and thereby reduce her chances of sex before or during the marriage and thereby extend honour to her family and husband. Others believe that if the clitoris touches a man's penis he will die, yet to others, an un-mutilated female cannot conceive.<sup>130</sup> FGM thus achieves an effective control of women's sexuality and reproductive rights by men.

Some reasons extended for polygamy are that it enhances a man's self-esteem and is a sign of wealth.<sup>131</sup> Proponents of widow inheritance argue that it will keep the wealth within the deceased husband's family, continue his lineage and safe guard against widow promiscuity. In return, the widow should expect the company of a responsible partner and limited material support.<sup>132</sup> Child marriages are now on the increase in Africa because they are believed to be more fertile as well as the widely held myth that having sex with young girls cures AIDS.<sup>133</sup>

There is growing concern that the stated practices have seriously compromised health and reproductive rights of women and girls around the world. FGM, polygamy, widow inheritance and child marriages have in particular exacerbated the spread of AIDS in Africa. The practices make it difficult for women and girls to control their sexuality or make a case for self-protection, yet they have very limited access to adequate medical facilities. This troubling situation is reflected in the present statistics whereby an estimated 25% of the people living in sub-Saharan Africa are infected with the AIDS virus, with women and girls being exceptionally vulnerable.<sup>134</sup>

In addition, the named practices are a clear violation of a wide range of rights of women. In particular are the rights to human dignity, life, privacy and the right to protection from all types of torture, inhuman and degrading treatment and violence. The latter is of particular interest since the stated practices invariably result into physical and psychological violence on women. In fact, most innovations around the world that have been devised over time have addressed these practices as a type of gender violence as it is understood in contemporary international human rights discourse.

Further, forcing children into early marriages can have profound physical, intellectual, psychological and emotional consequences. It will result into restriction of personal freedom, and have a negative impact on their health and education. For girls, it will in addition result into premature pregnancy with higher rates of maternal mortality and will likely lead to a life-time of domestic and sexual subservience. Teenage girls are for social and physical reasons more susceptible than mature women to sexually transmitted infections including HIV/AIDS.

## **1. LEGAL AND QUASI-LEGAL INNOVATIONS TO COMBAT HARMFUL SOCIO-CULTURAL PRACTICES**

### **2.1 Legal Innovations**

International efforts to eradicate harmful socio-cultural practices have a long history. As early as the 17th century, there were attempts by Christian missionaries and colonial administrations in Africa to prevent the practice of FGM. Unfortunately, these efforts were perceived as a colonialist attempt to destroy the local culture, and thus strongly resisted.

The years following the end of the Second World War saw the beginning of a process of decolonization and the creation of a universal framework for the protection of human rights in the form of the Universal Declaration of Human Rights (UDHR). It is in this context that FGM first appeared on the agenda of the United Nations (UN)

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<sup>130</sup> Rhonda Heitman 'Female Genital Mutilation' 104/00.

<sup>131</sup> "Should polygamy stay?" New Vision Newspaper 3/2/04 at page 17

<sup>132</sup> Nancy Luke "Widows and Professional Inheritors – Understanding AIDS Risk Perceptions in Kenya" at >[http://www.ssc.upenn.edu/social\\_networks/level:2003/papers](http://www.ssc.upenn.edu/social_networks/level:2003/papers)<

<sup>133</sup> Global Fund for Women Report at ><http://www.globalfundforwomen.org/4news/Africa-report/08-Guinea.html><

<sup>134</sup> Global Fund for Women Report at ><http://www.globalfundforwomen.org/4news/Africa-report/08-Guinea.html><

in 1958. However, it was not until after twenty years that serious innovations to combat FGM and other harmful practices begun.

The period immediately following World War II saw the creation of a universal framework for the protection of human rights in the form of legislation and international UN bodies with specific mandates some of which are concerned with protection against harmful socio-cultural practices. The more major ones will be discussed briefly.

**i) The Universal Declaration of Human Rights (UDHR)**

The UDHR proclaims a broad catalogue of rights, some of which address the issue of violence against women. Article 1 of the Declaration states that “human beings are born free and equal in dignity and rights.” Article 2 proclaims that all human beings are entitled to enjoy the full range of rights and freedoms set forth in the Declaration without distinctions of any kind, such as sex, thereby prohibiting all forms of gender-based violence, such as FGM. Article 3, guarantees the right to life, liberty and security of the person. This prohibits all forms of physical and sexual violence, including rape. Since most jurisdictions have now prohibited child marriages with penalty sanctions. Consummating such marriages amounts to statutory rape or defilement. Article 7 prohibits torture, cruel, inhuman or degrading treatment, and thereby prohibits acts of violence against women perpetrated for example through widowhood rites and FGM. Article 16 guarantees to all men and women of full age the right to marry and found families, and provides further that both men and woman are entitled to equal rights to marriage, during marriage and at its dissolution. This provision explicitly prohibits forced marriages as well as early marriages.

**ii) The International Covenant on Civil and Political Rights (ICCPR)**

The International Covenant on Civil and Political Rights was adopted by the UN General Assembly and opened for signature in December, 1966 and entered into force in 1976.<sup>135</sup> Article 6 guarantees the right to life, while Article 7 guarantees the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment. In addition, the right to liberty and security of the person is provided for under article 9. This should address practices like FGM and widowhood inheritance. Article 23 provides for the right to marry and found a family and prohibits forced marriages.

**iii) The International Covenants on Economic Social and Cultural Rights (ICESCR).**

This covenant was also adopted by the UN General Assembly and opened for signature in December 1966, entering into force in 1976.<sup>136</sup> The focus of the treaty is economic, social and cultural rights. The provisions that address the issues of harmful practices include, prohibition of forced marriages (Article 10), and the right of all to the highest standard of physical and mental health attainable (Article 12)

**iv) The Convention on the Rights of the Child (CRC)**

Among the rights guaranteed by this convention that relate to violence against the girl-child<sup>137</sup> are the right to life and the right not to be subjected to arbitrary or unlawful interference with her privacy, family, home or correspondence. State Parties are further enjoined to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Under Article 24 which provides for the right to health, State Parties are enjoined to take effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. Such practices would include Female Genital Mutilation (FGM), as well as early marriages, which predispose the girl-child to early pregnancies and all its attendant dangers.

**v) Convention on Consent to Marriage, Minimum Age for Marriages and Registration of Marriages**

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<sup>135</sup> Adopted and opened for signature by General Assembly resolution 2200 A (XXI) 16 December, 1996. date entry into force: 23 March 1976.

<sup>136</sup> General Assembly resolution 2200 A \*XXI ( of 16 December 1966). Date of entry into force: January 1976.

<sup>137</sup> Although the convention does not relate specifically to the girl child, many of the forms of exploitation and abuse mentioned in the convention affects girls specifically or at least disproportionately.

The preamble to this convention mentions the fact that “certain customs, ancient laws and practices relating to marriage and the family are inconsistent with the principles set forth in the UN Charter and in the Universal Declaration of Human Rights”

The preamble further provides that all the contracting States should take appropriate measures, with a view to abolishing such customs, ancient laws and practices by ensuring complete freedom in the choice of a spouse, eliminating, completely child marriages and the betrothal of young girls before the age of puberty, including establishing appropriate penalties.

#### **vi) Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)**

CEDAW has been hailed as the most important international legal document that deals with the human rights of women. It contains a comprehensive catalogue of rights dealing specifically with the situation of women around the globe. CEDAW brought together in a single international instrument various International conventions already in existence which define the sphere of human rights and brought into the legislative ambit many of the recommendations that had over the years been adopted by the UN Commission since its inception in 1946. CEDAW is an attractive legal document in that it came as the first international treaty to call for the abolition of all forms of discrimination against women and not just discrimination on the basis of sex.<sup>138</sup> It does not call for gender neutrality but instead prohibits all practices that perpetuate women’s inequality.<sup>139</sup>

It is note worthy that CEDAW does not expressly condemn social-cultural practices or even violence against women. The importance of the latter was noted by the CEDAW Committee<sup>140</sup> and resulted into General Recommendation No. 19 in which the Committee expressed the view that the definition of discrimination against women includes gender based violence. The Committee further emphasized that gender based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Accordingly, the CEDAW Committee is of the view that violence against women constitutes a breach, not only of Article 1 which prohibits discrimination against women, but also of Articles 2 and 3 which enjoin State Parties to eliminate discrimination against women in all its forms and in all fields of political, social, economic and cultural life. Article 2(f) requires States Parties to take all appropriate measures, including legislation, to modify and abolish existing laws, regulations, customs and practices that constitute discrimination against women. Therefore, customary practices such as forced marriages, early marriages and FGM, which constitute violence against women, should be outlawed.

The Committee has also observed that violence against women is a breach of Article 14 of the CEDAW. Article 14 requires States Parties to take all appropriate measures to eliminate discrimination against women in rural areas. Rural women are at risk of gender-based violence because traditional attitudes regarding the subordinate role of women persist more in rural communities and are more widespread than in urban areas.

## **2.2 QUASI LEGAL INNOVATIONS**

Innovations against harmful socio-cultural practices have since CEDAW gone beyond international legal instruments. There has been within the UN itself numerous innovations directed at such practices. The UN has worked closely with international and regional NGOs interested in this area.

A seminar organized in 1979 in Khartoum, Sudan, by the World Health Organization, set the direction for renewed international initiatives. Its recommendations, aimed mainly at the 10 governments from eastern and western Africa represented at the meeting, called for the adoption of clear national policies and the establishment of national commissions to coordinate the activities of various official bodies; the enactment of legislation where appropriate; and the organization of public education and outreach involving health workers and traditional healers.

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<sup>138</sup> Article 1.

<sup>139</sup> Article 32.

<sup>140</sup> The body which was set up to implement the convention.

Interest resurfaced among international non-governmental organizations (NGOs) during the UN Decade for Women (from 1975 to 1985) which highlighted the status of women in developing countries. The Programme of Action of the UN World Conference on Women held in Copenhagen in 1980 called for urgent steps to combat negative traditional practices detrimental to women's health.

This call echoed increasing demands from African women's organizations and others for greater attention to be paid to these practices. These demands led to the creation in 1984 of a UN Working Group on Traditional Practices Affecting the Health of Women and Children and the appointment of one of its members as a Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Rapporteur, Halima Warzazi, undertook field missions to Djibouti and Sudan and produced two reports in 1989 and 1991 which contributed to a better understanding of the phenomenon.<sup>141</sup>

Two regional seminars were organized by the UN in Burkina Faso (1991) and Sri Lanka (1994) to assess the human rights aspects of FGM and other traditional practices affecting women and children. The seminars - a forum for discussion between national officials, UN specialized agencies and NGOs - led to the 1994 Plan of Action for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children. The plan of action makes a bold statement that:

*"FGM "is a human rights violation and not only a moral issue...[It] is an expression of the societal gender subordination of women".*

It contains 62 measures for governments to take at a national level. Key among these are: giving a clear undertaking to end traditional practices, and in particular FGM; ratifying and implementing relevant international instruments; drafting legislation prohibiting such practices; and creating bodies and mechanisms to ensure that adopted policies are implemented.

At an international level, the Plan of Action recommends the inclusion and integration of FGM in the work of various UN specialized agencies and other UN bodies, including the Commission on the Status of Women and relevant treaty bodies such as the Committee on the Rights of the Child. It also urges NGOs to integrate and reinforce their activities.

In order to follow up the Plan of Action, and to allow more in-depth analysis of the issue to take place, the mandate of the Special Rapporteur was extended. Her July 1997 report examines the status of implementation of the Plan of Action in a number of countries and surveys more recent international efforts to combat the practice.

Her work has been complemented by that of the Special Rapporteur on Violence against Women. The former Rapporteur Radhika Coomaraswamy, filed reports to the Commission which included analysis of FGM as a form of violence against women and concrete recommendations for prevention.

Two recent world conferences have also marked a critical development in the UN's role on FGM. In 1994, the International Conference on Population and Development was held in Cairo. One of the achievements of the Conference was to highlight the intimate interconnections between women's health and women's human rights. The Conference Declaration urged governments to prohibit FGM, and to give support to community organizations and religious institutions working to eliminate the practice<sup>142</sup>.

The Fourth UN World Conference on Women, held in Beijing in 1995, represented a historic attempt to overcome the traditional neglect and indifference surrounding women's human rights. The Beijing Declaration and Platform for Action underscored the obligations of governments to combat violence against women - including FGM - as a priority.

In April 1997, three UN agencies, the World Health Organization, United Nations Children's Fund and United

<sup>141</sup> For more information see UN initiatives at <http://www.amnesty.org/lalilib/intcam/femgen/fgm7/htm>

<sup>142</sup> As above.



Nations Population Fund, unveiled a Joint Plan to bring about a major decline in FGM within ten years and to completely eradicate the practice within three generations. The plan emphasizes the need for a multi-disciplinary approach, and the importance of teamwork at a national, regional and global level. This teamwork would bring together governments, political and religious institutions, international organizations and funding agencies. The basis for this cooperation at a country level would be national "inter-agency teams" supported by international organizations.

The plan takes a three-pronged approach: educating the public and law makers on the need to eliminate FGM; "de-medicalizing" FGM, tackling it as a violation of human rights as well as a danger to women's health, and working with the entire UN system to encourage every African country to develop a national, culturally specific plan to eradicate FGM. The Joint Plan represents a welcome step towards greater integration and coordination of the activities of UN agencies on FGM.

UNICEF now addresses child marriage as part of its broader approach to gender discrimination, which undermines the right of women and children. UNICEF's Global Girls' Education Programme operates in more than 60 countries to ensure that girls have an equal opportunity at education, which is key in postponing marriage and for the overall development of girls.

In addition to supporting advocacy and communication campaigns in several countries, UNICEF has also helped develop two successful initiatives in South Asia and Sub-Saharan Africa the regions that have recorded the highest rate of child marriage.

User friendly innovations that appeal to the target groups have been devised. For example the 'Meena Initiative' in South Asia is named after the young cartoon heroine of a multi-media package and serves as a catalyst for discussion on gender discrimination in childhood. In Uganda, the cartoon strip *SARA* became a popular character in the New Vision Newspaper (Child Vision). Issues covered include son preference, unfair treatment of girls in the family, their lesser access to health and education services, harmful traditional practices such as dowry and sexual harassment, as well as early marriage.<sup>143</sup>

Building on Meena's success, the Sara Adolescent Girl Communication Initiative has been developed in 10 Eastern and Southern African countries. The importance of staying in school is one of the main messages of this radio series. Other issues covered include, HIV/AIDS, domestic workload, FGM and early marriage.

### **3. REGIONAL INNOVATIONS – THE AFRICAN PERSPECTIVE**

Regional initiatives to combat harmful socio-cultural practices through the use of legal instruments in Africa have been very slow and indecisive. This is lamentable especially when these practices are most widely practiced on this continent than anywhere else in the world.

#### **3.1 The African Commission on Human and People's Rights (ACHPR)**

Currently, part of the African human rights regime is embodied in the jurisprudence of the African Charter on Human and People's Rights<sup>144</sup> (the Charter) which has created as its principle monitoring organ the African commission on Human and People's Rights (the Commission) and established its procedures.

It must however be noted at the outset that issues of human rights of women have only recently gained prominence in the commission. The Charter itself is woefully deficient on the rights of women. Culture was reinforced in the preamble when State Parties based the foundation of the instrument on 'tradition and values of African civilisation' and, gender only appears in the middle of a lengthy list of grounds on which individual rights may not be distinguished.<sup>145</sup> Further, only one out of the sixty-eight articles expressly makes reference to

<sup>143</sup> For a more comprehensive report see >[http://www.afrol.com/categories/women/wom025\\_child\\_marriages.htm](http://www.afrol.com/categories/women/wom025_child_marriages.htm)<.

<sup>144</sup> The Charter was adopted on 27/6/1981 and came into force on 21/10/86. OAU.CAB/LEG/67/3 rev.5, 51 out of 53 African countries have ratified the Charter. Therefore it is only Morocco and Somalia that are currently exempt from its provisions.

<sup>145</sup> Article 2.

women and as Oloka-Onyango notes, it is placed in an omnibus clause covering family rights and traditional values ‘thereby reproducing the essential tension that plagues the realisation of human rights by women.’<sup>146</sup> In Welch’s view, the end result is that,

The Charter conveys a potentially ambiguous message in its attempt to recognize both deep-seated African values (which arguably include clear differentiation of roles and rights based on gender) and emerging global values (among which non-discrimination on the basis of sex figures prominently).<sup>147</sup>

It is clear from the above that originally in the African regime, the protection of human rights of women was to be dealt with within the institution of the family, an institution in which most harmful social and cultural practices continue widespread, unabated and unchecked. The practice of African societies has been to keep issues of the family sacrosanct and private. Meaning that human rights abuses on women (like harmful practices) are hardly reported or dealt with in the former sector.

Fortunately, recent innovations have brought about marked improvement at the regional level. Active NGO input (for example NGOs like Women in Law and Development in Africa (WILDAF), have pushed for improvements in the Commission which as an international body should exhibit a decent catalogue of human rights and effectiveness by setting acceptable international standards with regards to the rights of the Charter and mandate of the commission itself.

### **3.2 The Special Rapporteur on the Rights of women in Africa.**

Perhaps one of the most innovative achievements of the Commission came in October 1998 by the appointment of a Special Reporter on the rights of women in Africa.<sup>148</sup> The Commission justified the appointment after its realization that the provisions of the Charter did not ensure protection of fundamental rights of women. It was also reasoned that it was necessary to appoint such a person to assist in the effective implementation of the Commission’s mandate.

The mandate has undertaken her duties either in special procedure or in conjunction with the other Commissioners to highlight abuses around the continent and commending particular member states where improvements in the protection of women’s rights have been evident. One such visit was to Mauritania in 1997 where she issued a report highlighting violations against women including harmful traditional practices like FGM, early marriages and discriminative marriage and divorce laws.<sup>149</sup>

Unfortunately, the presence of a Special Rapporteur on the rights of African women has hardly improved the marginalized position of women on the continent or improved their rights as victims of abusive harmful social-cultural practices. This is because the mandate’s work has been severally limited due to lack of funds and human resources.<sup>150</sup>

The post is currently held by Angela Melo, a Mozambican jurist whose terms of reference range from carrying out a study on the situation of human rights of African women, following up implementation by State Parties and encouraging NGO work in the field of promotion and protection of the rights of African women. The Rapporteur also has the mandate to serve as a link between the Commission, intergovernmental and NGOs at regional and international level in order to harmonize the initiatives on the rights of women. Therefore the terms of reference signify that the Special Rapporteur is the principal sword of the Commission to combat harmful social and cultural practices around the continent. Unfortunately, her work has been seriously impaired by logistical and financial constraints and much of her work in the area of women’s social and cultural rights is

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<sup>146</sup> Oloka-Onyango J ‘Human Rights and sustainable development in contemporary Africa: A new dawn, or retreating Horizons?’ *Buffalo Human Rights Law Review* (2000).

<sup>147</sup> Welch “Protecting Human Rights in Africa. Roles and Strategies of NON-Governmental Organisations. (1995) 554.

<sup>148</sup> See 12<sup>th</sup> Activity Report of the African Commission on Human & People’s Rights 1998-99 Annexure IV.

<sup>149</sup> Report of the Commissioner’s mission to Mauritania Novakchott 19-27 Evans & Muray (2000).

<sup>150</sup> The Commission offers very limited logistical and financial support and the mandate has had to rely heavily on NGOs.

hardly mentioned in the Commission's activity reports. She has managed very few visits to State Parties meaning that her impact is hardly felt by grass root women.

### **3.3. The Protocol to the African Charter on Human and People's Rights Relating to the Rights of Women (The Protocol).**

The Protocol is the most recent innovation in the African Human Rights regime to address rights of women and its history is quite phenomenal.

Despite the presence of CEDAW and its application to Africa, African women felt that they needed an African specific human rights document; one that would directly and more relevantly address their human rights needs. In fact, CEDAW which had not made any specific provision for harmful socio-cultural practices could not through its provisions address social issues of violations of human rights by these practices. Worse still in Africa, despite its well articulated articles on women's rights, the drafters of the Charter were only minimally influenced by CEDAW's provisions, incorporating it only by reference and not by name.<sup>151</sup> Even then, CEDAW has the weakest implementation and enforcement mechanism of any of the international human rights instruments and did not until October 1999 allow for individual petitions.<sup>152</sup> Further, CEDAW has recorded the highest number of reservations, which further weakened its impact.<sup>153</sup> The reservations made by African Islamic governments to CEDAW (on the basis that it violates the teachings of the Shari'a), outnumber all reservations made by such governments to all other human rights instruments.<sup>154</sup>

It is important to note that prior to the Protocol, women NGOs and human rights activists had continuously drawn the attention of African governments and regional bodies to the plight of African women and girls suffering from harmful religious and cultural practices. The African Committee on Traditional Practices Affecting the health of Women and Children headed the call. This NGO in cooperation with the OAU drafted the '*OAU Convention on the Elimination of All forms of harmful Practices Affecting the Fundamental Human Rights of Women and Girls*'. The draft was eventually integrated with the Draft Protocol on Women to form the current Protocol in which provisions protecting African women from harmful practices feature prominently.

In particular, Article 5 of the protocol calls upon State Parties to condemn all forms of harmful practices which negatively affect human rights of women and which are contrary to recognized international standards. States are to put into place legislative and other measures to combat these practices, offer support to victims and timely protection to those most vulnerable to these practices. In addition, the Protocol in Article 17 guarantees women to live in a positive cultural context and the right to participate at all levels in determining cultural policies.

Further, the Protocol has made provision for rights ranging from protection from discrimination, rights to dignity and security, family rights, access to justice, economic cultural, health and reproductive rights which are relevant in the fight against harmful socio-cultural practices.

Some of the rights discussed above were introduced in the African regime for the first time, coming as an elaboration of CEDAW, and also expanding existing rights in the Charter, especially Articles 2 and 18. This makes the Protocol 'truly African', and its provisions more women specific and gender responsive.

However, the passing of this instrument will not necessarily result into immediate emancipation of African women. This is because it shall come into force only after 30 days of the 15<sup>th</sup> ratification<sup>155</sup> and for African states that have so far shown much reluctance in championing human rights in general, this may take several years. So far, only the Gambia has ratified the Protocol (in September 2003).<sup>156</sup>

<sup>151</sup> Article 60 of the Charter.

<sup>152</sup> Additional Protocol to CEDAW, which came into force on 22 December 2000.

<sup>153</sup> Oloka-Onyango & Tamale "The Personal is Political" or Why Women's Rights are Indeed Human Rights" an African Perspective on International Feminism' Vol. 17 Human Rights Quarterly.

<sup>154</sup> Zeid 'Equality, discrimination and constitutionalism in Muslim Africa' in Oloka-Onyango (ed) Constitutionalism in Africa: Creating Opportunities, Facing Challenges. (2001) 171.

<sup>155</sup> Article 29 of the Protocol.

<sup>156</sup> Information obtained from a Legal officer at the Commission Secretariat (Banjul) in October 2003.

Significant omissions in the Protocol itself have weakened its impact. For example, no mention was made of bride price yet it is one cultural institution practiced across the continent that has cemented women's subordinate position in the family.

It should however be appreciated that the drafting process was carried out within a restrictive environment and therefore the need to compromise. For example, the debate over the retention or prohibition of polygamy was long and heated. The drafters had to strike a balance between providing for monogamous unions (that in theory represent equality of sexes in marriage) and at the same time accommodate for Islam and culture where the practice is accepted. The result was Article 6 (c), which accommodates both factions and calls for equal protection of women in both types of union. Moreover, it is highly unlikely that the conservative AU Assembly consisting entirely of men would agree to abolish polygamy entirely.

### **3.4 Communications to the African Commission on Human and People's Rights**

Another important innovation in the Commission has been communication by member states, NGOs and individuals to the commission.<sup>157</sup> The Commission is open to communications from NGOs and individuals and throughout its history, NGOs have been at the forefront of presenting communications. However, NGOs have not been diligent in bringing cases that augment women's rights and even when they do present communications, their areas of interest have mainly been political and civil rights.<sup>158</sup> In particular, no report has yet been made of a communication specifically targeting any one of the discussed harmful practices. The reason could be that the number of NGOs concerned with women's rights is still small,<sup>159</sup> lack effective funding, logistical and technical support to feature prominently at the regional level. It has also been observed that most NGOs are focusing on development than rights, reasoning that the sheer struggle for survival occupies the attention of most African women.<sup>160</sup>

This state of events is very discouraging, basing on the fact that the abuse of social and cultural rights, through harmful practices of African women are prominent and widespread on the continent.

## **4. EXTRA LEGAL INNOVATIONS**

It is becoming increasingly evident that social-cultural practices are too deeply entrenched into the societies in which they are practiced to be eradicated through legal means alone. Women and men alike have continued to promote and respect these practices unabated in spite of existence of both international and national legislation outlawing them. There has therefore been a shift towards merging legal, quasi and extra legal innovations to eradicate such practices.

For example, the Africa News Service reported in November 1997 the emergence of a new rite known as "*Ntanira na Mugambo*" or "*Circumcision Through Words*". In Kenya the rite takes the form of a week-long program of counselling, capped by community celebration and affirmation, in place of the widely criticized practice of FGM. During December, 1997 residents of some 13 villages in central Kenya celebrated the fourth installation of this increasing popular alternative rite of passage for young females.

The first circumcision through words occurred in August 1996, when 30 families in the tiny village of Gatunga, not far from Mount Kenya, ushered their daughters through the new program. Some 50 families participated in the programme in December followed by 70 families in August 1999.

Circumcision through words grew out of collaborations between rural families and the Kenyan national women's group, *Meandele'o ya Wanawake Organization* (MYWO), which is committed to ending FGM in Kenya. It follows years of research and discussion with villagers by MYWO field workers with the close cooperation of the Programme for Appropriate Technology in Health (PATH), a non profit, non governmental,

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<sup>157</sup> A commission is a legal case instituted by anyone legally competent to do so before the Commission. It assumes an adversarial procedure in which a state, NGO or individual is pitted against a State which is a signatory to the Charter.

<sup>158</sup> This is the case even for countries like Nigeria whose NGOs have constantly featured in the Commission.

<sup>159</sup> For example by 2001 there were only 16 NGOs specialising in women's rights with observer status before the Commission out of the total of 236. See Welch (No 26 above) 208.

<sup>160</sup> Welch as in (No 26 above) 557.

international organization which seeks to improve the health of women and children. Head-quartered in Seattle, PATH has served as technical facilitator for MYWO's FGM program, providing the methodologies and other inputs to help carry it forward.

Undeniably, it seems the central defining achievement of 'circumcision through words' is not necessarily that it saves young women from the dangers of FGM, but, that it captures the cultural significance of female circumcision while doing away with the dangerous practice itself.

"People think of the traditions as themselves" related Leah Muuya of MYWO "they see themselves in their traditions. They see they are being themselves because they have been able to fulfil some of the initiations" said Muuya in " Secret and Sacred" a MYWO- produced videotape, distributed by PATH, which explores the personal dangers and harmful social results of FGM. The tape explains that female circumcision has traditionally signalled when a young woman is ready for the responsibilities of adulthood.

In response, circumcision through words brings the young candidates together for a week of seclusion during which they learn traditional teachings about their coming roles as women, parents and adults in the community, as well as more modern messages about personal health, reproductive issues, hygiene, communication skills, self-esteem, and dealing with peer pressure.

The week is capped by a community celebration of song, dancing and feasting which affirms the girls and their new place in the community. It has been very well received by the community showing that it was a critical achievement in their efforts to eradicate FGM.

MYCO and PATH have also developed public awareness campaigns that spread information on the harmful effects of female genital mutilation. According to Dr. Asha Mohamud, a PATH Senior Program Officer focusing on FGM, the two organizations agree that information, education and public discussion are more effective tools against FGM than direct, prohibitive action.<sup>161</sup>

Other countries in Africa have also adopted extra-legal methods to eradicate harmful socio-cultural practices. For example, BBC news reported in September 2003 that 250 villages from three rural communities in Senegal pledged to abandon FGM. Further, 350 traditional circumcisers in northern Ethiopia agreed to abandon FGM as a result of intensive sensitization by health officers.<sup>162</sup> The USA has adopted a more victim oriented approach by encouraging the creation of medical practices that address the medical and emotional needs of female immigrants.<sup>163</sup>

The government of Somalia one of the countries where FGM is prevalent, has overtly intensified and encouraged extra legal efforts to combat it. A ground-breaking international seminar on "Strategies to Bring About Change" was held in June 1988, in Mogadishu, to draw world attention to the Somalian campaign to eradicate infibulation.

The SWDO (Somali Women's Democratic Organization), jointly with ADIoS (The Italian Association for Women in Development) has organized a national campaign, fully supported by the Somalian government, to eradicate damaging traditional practices. Indeed, every department of the Somalia government is involved in this national initiative led by the outspoken president of the SWDO, Muraio Garad Ahmed, who wields considerable political power.

AIDoS, led by Daniela Colombo and with the assistance of the Italian Government, has worked jointly with the SWDO in Somalia to develop viable strategies and extensive teaching aids for different kinds of programs addressed to different sectors of the population.

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<sup>161</sup> For more information see Africa News on line "Alternative Rite to Female Circumcision Spreading in Kenya at >[http://www.africanews.org/specials1.19971119\\_fgm.htm](http://www.africanews.org/specials1.19971119_fgm.htm)<

<sup>162</sup> BBC News on line at >[http://www.fgmnetwork.org/image/new\\_header.gif](http://www.fgmnetwork.org/image/new_header.gif)<

<sup>163</sup> The USA government has taken steps to criminalize FGM and now considers asylum applications in light of FGM practices in the country of origin.

The secrecy surrounding infibulation has only recently begun to be lifted in Somalia. It took considerable courage for the SWDO to take up this issue. Thanks to the perseverance of its leadership, it now has become a national campaign supported not only by the health ministry, but also by all other ministries, especially the education ministry. The campaign to eradicate female child genital mutilation is going on in all schools; it is discussed in the media. Every occasion is used to create awareness among the population about the damage done by infibulation. All families are urged to stop having their daughters “done”.

This international seminar had been preceded by a national meeting, which had developed a program of action for the joint SWDO-AIDS Information Campaign. At the international seminar in Mogadishu, many influential national and international leaders gave speeches at the opening and closing sessions in the great hall Parliament. The speakers included a representative of the President of Somalia, the Minister of Health, AIDS and others.

Delegates from several African countries, including Egypt, Sudan, The Gambia and Nigeria presented outlines about the successful campaigns and strategies to eradicate female child genital mutilations in their countries. Egypt with a program sponsored by the Cairo Family Planning Association, led by Aziza Kamel, has the most extensive experience in conducting a multitude of successful grassroots initiatives. From London, Stella Efua Graham, a native of Ghana and President of FORWARD (The foundation for Women’s Health), outlined her educational work among African immigrants to the UK. A doctor from Indonesia discussed how female circumcision in Indonesia had now been changed into a purely symbolic rite. Berhane Ras Work, the president of the Inter –Africa Committee (IAC) on “Traditional Practices Affecting the Health of Women and Children” foundation in 1984, talked about its work all over Africa.<sup>164</sup>

FGM has been cited by the World Health Organization (WHO) as a major public health problem. At the WHO seminar in Khartoum on Traditional Practices Affecting the Health of Women and Children (1979), nine African and Middle Eastern countries which participated formulated four ground breaking recommendations for abolishing FGM i.e.

- Adoption of clear national policies for the abolishment of FGM
- Establishment of national commissions to coordinate and follow up the activities of other bodies involved including, where appropriate, the enactment of legislation prohibiting FGM.
- Intensification of general education of the public, including health education at all levels, with special emphasis on the dangers and the undesirability of FGM.
- Intensification of education programs for traditional birth attendants, midwives, healers and other practitioners of traditional medicine, to demonstrate the harmful effects of FGM, with a view to enlisting their support along with general efforts to abolish this practice.

A documentation was made of case histories from most African countries where FGM is practiced, including the South of the Arab Peninsula. It was found out that in Malaysia and Indonesia a less drastic operation is performed by some of the Moslem population.<sup>165</sup>

In 1984 at a conference in Dakar to follow up on the WHO seminar, the Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children was organized by African women to prevent and eradicate FGM. The IACa private organization with offices in Addis Ababa and Geneva now has affiliates in more than 24 African countries and sponsors many activities as well as education programmes to stop the practice.

WHO has adopted more graphic methods by developing the Universal Childbirth Picture Book (**CBPB**) with Additions to prevent Excision and Infibulations with recommendations by Women’s International Network. The **CBPBs** in English, French and Arabic are distributed all over Africa. Recently a Somalia translation was published. More than 70,000 of these graphic teaching materials have been distributed in Africa to explain

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<sup>164</sup> For a more detailed report see Hosken P “Female Genital Mutilation: strategies for Eradication. A paper presented at the first International symposium on Circumcision, Anaheim, California, March 1-2, 1989.

<sup>165</sup> F.Hosken (as in n 43 above).

reproduction in pictures regardless of language or literacy. WIN NEWS, a quarterly journal which has covered women and development around the world since 1975, regularly publishes information and news about FGM. Fran P. Hosken, the editor and publisher, is encouraging open discussion of FGM and urges more support for African women working for eradication of FGM.<sup>166</sup>

## 5. THE WAY FORWARD

This paper has attempted a discussion of the most common harmful social-cultural practices carried out on women around the globe as a human right issue. Part of the discussion explored the extent of the problem and the reasons for the practice. Efforts to combat the practices have also taken up a large part of this paper.

In conclusion, this researcher extends a few suggestions to charter the way forward in combating the problem. Judging from the complexity and prevalence of these practices, the suggested innovations are not in any way exhaustive or even guaranteed to be successful. However they will at least contribute towards already existing efforts in combating these practices.

- i) It is suggested that legal innovations addressing these practices should be maintained. These have set international, regional and national standards that can 'force' communities to abandon and 'check further spread of the practices. For example, for cases of child marriage, arguments for cultural and religious doctrines notwithstanding the international standard is to put the welfare of the child first. FGM compromises the bodily integrity of women and in many cases has resulted into death. Penal sanctions for such a practice are therefore to commensurate such heinous crimes.

Many human rights scholars have noted that international and national law may be very well drafted and promoted but will lack effectiveness if not well implemented. Mugwanya has aptly noted that the priority facing the human rights revolution especially in Africa is to channel half a century's worth of international norms and standards into national legislation and practice.<sup>167</sup> Implementation of the fruitful provisions in these instruments by the UN bodies and other special procedures of the UN (e.g. the special Rapporteurs) should be felt. This goes for regional bodies as well. This paper has shown the tremendous progress so far achieved at the international level to address the problem. Such innovations can only be felt by proper implementation. Only then can they be of any meaningful impact on the victims who they are meant to protect.

- ii) Further to the above, it is important to note that despite progress at the international level, human rights are largely about the meeting of international obligations by individual states within their specific contents. Countries faced with the problem are in a better position to devise appropriate legislative policy (etc) to suit their circumstances. Progress around the world in any form should be encouraged and where it has succeeded made an example to other countries. Political and opinion leaders in the most affected countries should come out openly to speak against the practices and governments should not be slow in passing appropriate legislation.

For example, President Daniel Arap Moi of Kenya exemplified good policy when he categorically prohibited genital mutilations in Kenya in 1982.<sup>168</sup> This was a complete departure from the pronouncements of his predecessor Jomo Kenyatta who had encouraged it. Uganda has by its Constitution set the marriageable age at 18 years<sup>169</sup> and strictly outlawed child marriages by its penal laws. Although polygamy is set to be acceptable by the law in Uganda's future,<sup>170</sup> stringent conditions have been placed on it to ensure that women in such unions are fully protected. Legal innovations should be practical flexible and meaningful. For example offering easier legal exits from oppressive marital unions will reduce polygamy.

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<sup>166</sup> F.Hosken (as in n 43 above).

<sup>167</sup> Mugwanya F, 'Realizing Universal Human Rights Norms Through Regional Human Rights. Mechanisms: Reinvigorating the African System (1999). Indiana International and Comparative Law Review.

<sup>168</sup> Hosken, F As in 43 above.

<sup>169</sup> Article 31(1).

<sup>170</sup> The Domestic Relations Bill.

- iii) Increasing mobility of African and middle Eastern immigrants into the west and Australia have exported FGM to this part of the world. The developed world should therefore also be on guard to curb such practices within the immigrant community. Britain has moved swiftly by passing special legislation to prohibit operations carried out by obliging physicians (for a high fee). In France criminal courts have prosecuted African immigrant families where girls died as a result of FGM. Australia has alerted health services to warn communities of these practices.<sup>171</sup>
- iv) The prevalence of harmful socio-cultural practices has shown the futility of fighting custom with 'legal' and 'punitive' force. Other ways may have to be devised to encourage people to abandon these practices in a manner that will not make them feel that their cultural beliefs and manifestations are being usurped by 'western' ideologies. Innovations like the 'Ntanira na mugambo' of Kenya should be given more thought and input.
- v) To some human rights activists, empowerment of women is the key factor of women's total freedom from those practices. Economic, social and political empowerment is essential starting from the individual level and extending to the collective dimension. Women should get to know their rights and social empowerment especially the fact they can freely extract themselves out of the straight jacket of tradition and custom. Political empowerment will teach women to begin congregating for the purpose of agitating for their rights and implementing useful policy. Economic empowerment will amount to sustainability and appropriate decrease in child marriages, wife inheritance and women being forced into polygamous unions.<sup>172</sup> A bottoms up and not top down approach will ensure best results. Working methods of sensitization should perceive that women are not just victims of human rights abuse but also actors who can define and defend human rights from the perspective of their own lives. Boabab a women human rights organization based in Nigeria (focusing on legal literacy) perceives the language of empowerment to be 'directly assisting grassroots and activist women by providing a better understanding of the multiple forces that define the parameters of their lives, thereby equipping them to strategize for their own empowerment. Hence women can use {women and Laws} derived knowledge to strategize and campaign around defining and pressing for the enforcement of women's rights in the family, as citizens and over their own selves and bodies.'<sup>173</sup>
- iv) Countries faced with the problem should invest in sensitization and awareness building. NGO work in areas like popular education, training, inter disciplinary teaching, exchange of ideas and resource development can go a long way in building confidence in women and ensuring actual empowerment.
- iiiv) A victim-oriented approach should be encouraged. Support in simple terms can come in the form of basic services e.g. health services, alternative shelter, micro-credit, legal and judicial support, emotional and psychological counselling and economic empowerment for self sustenance. Previous protection for women most susceptible to the harmful practices will be very useful.

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<sup>171</sup> Hosken, F As in 43 above.

<sup>172</sup> Poverty and oppressive inheritance laws and customs have been the main cause of child marriages and wife inheritance.

<sup>173</sup> Quoted y Pereirac "Culture, Gender and Constitutional Restructuring in Nigeria in Olaka-Onyango (2001) as in No 33 above) at 162.



# **BRIDE PRICE AND THE VIOLATION OF WOMEN AND CHILDREN'S RIGHTS, A CASE OF FORCED CHILD MARRIAGE IN KABERAMAIDO**

**Presented by Julius B. Kapwepwe Mishambi**

**Program Officer - The Association for Rehabilitation and Re-orientation of Teso Women for Development (TERREWODE)**

## **PREAMBLE**

I salute you all ladies and gentlemen, in your respective capacities, all protocol observed.

It is sincerely not often that we meet in such a forum, or even have such distinguished visitors, from a diverse background like you and on such a morning/afternoon. I am therefore, unreservedly honoured by everyone's presence, so that we focus our dear brains on a number of issues on bride price and development that will be raised in this presentation.

### **Brief Background**

The seven-year insurgency in Teso region, eastern Uganda, between 1987 and 1993 left the region stained with difficulties of a socio-economic, political and human rights nature. Teso region is comprised of the four districts of Kumi Soroti, Katakwi and Kaberamaido. Kaberamaido, nonetheless, is used in this case, based on the research findings on early forced child marriages. This study was done in the year 2002.

The women were the worst victims in the insurgency, characterized by loss of life and property, rape and defilement, social strife and displacements, as havoc and mayhem raged over and amongst the beleaguered armed forces of the National Resistance Army (NRA), now the Uganda People's Defence Force (UPDF), the thuggery activities of the Karamajong Cattle Rustlers (KCR). The difficulties caused by the insurgency amongst other things, early forced child marriages. The study on early forced child marriages showed that the girl victims, as well as, their parents/guardians were the worst hit. This was essentially due to bride price/wealth. Those who gave it separation of their parties involved in early forced child marriage as a result of the 1987-1993 insurgency in Teso Region.

It is vital to note at this juncture that as the insurgency raged confusion and anarchy on eastern Uganda, domestic animals (especially cows), which for generations were a major source of wealth and livelihood for the Teso region populace, were raided, by both the combatants and the KCR. Animals would be reared and then sold away for household income for children's school fees (especially the boys) and other obligations.

Even though the afore-mentioned study pointed to the existence of the practice of early forced child marriages amongst the communities in Teso region, it was clear that the insurgency catalysed the practice.

### **Forms of early forced marriages**

1. Many girls and women were simply grabbed out of their homestead by the warring factions of UPA, NRA and KCR. These women and girls became wives and companions of these factionalists.
2. Where parents identified a home/homes with food and /or animals (Cows, goats etc.) and approached it with their daughter(s).
3. In some instances, where the parents had no boy children so succumb to the rebels' recruitment and call for support or else risk death, quickly presented their daughters so that risk is waived, or at least reduced. Even then, this waiving was for a while, as the rebel kept 'asking for more, like Oliver Twist', from a number of parents. Little wonder that some of these parents sooner than later met their death/share of insecurity anyway, courtesy of mainly the rebels.
4. These were categories where couples were killed, separated or divorced in their course of the persistence of the seven -year insurgency. A number of men re married, abandoning their previous wives and children. In such situations, the girl children quickly opted for marriage as to take care of their younger siblings.

5. The study also established one form of early forced child marriages, where parents / guardians gave away their children into marriages, these were particularly the girls that had been defiled by the armed forces and the parents thought, that most likely, no one would speak to such girls for a hand in marriage, given the defilement stigma at the end of the 1987-1993 Teso insurgency.
6. There were girls who were waylaid, defiled and forced away by the warring parties. Such girls ended up into forced marriages, at least for some time. Those who though were lucky to return to their respective homes found their parents already charged and convinced that they (girls) must run into marriages, for bride price before they were again grabbed by the fighters. Bride price/wealth took the form of a cow or two, bicycles(s), goats, food, money and such domestic items as blankets mattresses etc.
7. Young boys were encouraged by the parents to marry before all the cows were lost to the warring groups. Remember that boys being talked about here were mainly in the age of 12-18 years. Likewise, the girls lied in the age of 10 –16 years. In other words, both the boys and girls were children still being looked after by their parents, but soon shouldered the ‘married’ life.

Such instance as above degenerated into social strife, chaos and confusion, even after the insurgency. Probably, without Bride price / wealth taking the centre-stage in the already deplorable situation of early forced child marriage in Teso region between 1987 and 1993, the face of this situation would have looked better than is the case apparently.

Imagine entering a marriage in such circumstances as highlighted above.

- Whose rights were/are being protected?
- Whose respect/dignity is trampled upon more, between the man and the woman?
- What was to be the future, even the present, of such marriage?
- How about risks and cases of sexually Transmitted infections, widowhood etc?

Certainly, before long, when the insurgency subsided (since the KCR activities have remained a thorn in Eastern Uganda) and until recently, the Kony rebels’ atrocities, the numbers of separation and divorce cases shot up. Remember these cases were characterized by verbal artillery, physical and emotional assault, a feeling of superiority and inferiority, cat-rat (slave-master relationship- KARL MARX), harassment from in-laws etc.

So, as the boys (husbands) went back to school they soon get better education, new and English-speaking lovers and later as wives of their choice. Meanwhile, their previous girls (wives) did not marry boys but some girls further felt that it was degrading to study with their spouses. Therefore, socially, economically and in terms of human rights, the previous female partners got more disorganized and vulnerable than their male counterparts.

Meanwhile, those people that had given bride price began, and still continue, to demand it back. The husbands of the girl victims of the early forced child marriage continued to demand ‘their’ dowry to be returned. The parents of the female victims (those still living) are poor and unable to pay back the cow(s) or bicycles or food items they received. Recall that what they received was simply lost to the warring factions or even later to Karamajong Cattle Rustlers (KCR). The food items had been eaten long ago, the blankets and the bicycles had become tired long ago, etc.

### **Poverty and Bride Wealth**

In the context of what concerns us here today due to a condition of biting poverty; the study established that some parents/guardians were encouraging their daughters to remain in the marriage unions, even if harsh and extremely abusive, till such a time when they (parents) would raise the bride price to pay back. Other parents allowed their daughters to strategize for some men that would take them up and payback previous dowry. In other words, early forced child marriage as to attract bride wealth continued taking root due to post-insurgency poverty, etc.

The parents/guardians are not doing this because they lost love for their children. It is due to the conditions of poverty. Is it, nevertheless, the poverty of the mind, material, loss of human dignity or what?

All the above and such related aspects raise more questions than answers, for example:

- Why don't those homes asking back their bride price intact give back intact the girls they took into marriage?
- Who will compensate for the labour that these girls/women have given away at the husbands' home for that matter?
- Really, are the above demands fair to the girls' parents and the very girls who are now exhausted and hated women by their so-called husbands? Yes, exhausted due to maltreatment and heavy workload, but not too exhausted to reclaim their rights.

All these and such related concerns have made Teso region experience social unrest between and among families. Bride Price/ Wealth in this case has caused social strife. It has also perpetuated the erosion of human Rights of the parties involved in such marriage as above, particularly the girls/women.

### **AFTERMATH OF 1987-1993 TESO INSURGENCY AND BRIDE PRICE**

Today, the aftermath of the 1997 –1993 insurgency continue to prevail in Teso region. Notable of these are pathetic conditions of poverty in its diverse forms. This continues to provide a breeding ground for bride price/wealth, abuse of women and children's human rights.

### **HOPE AMIDST DESPAIR**

Given the scenarios as highlighted upon in this presentation, is all lost? No and No. apparently, there is a ray of hope.

1. There is increasing awareness and appreciation of Human Rights and dignity by both individuals and institutions, Teso region and elsewhere.
2. The existence of a number of coalitions, Non-governmental organizations (NGOs and Community based Organizations (CBOs) like TERREWODE, SOCADIDO, TENEPI, Diru Women's Group, etc have improved the earlier pathetic conditions of the people of Teso region, through development initiatives.

The above are some of the avenues we could use to build on to further examine the issue of bride price/wealth and how it, for example, perpetuates poverty, abuse of women's and children's rights, deprivation and social strife and how these should give way to sustainable development that is human-centred.

TERREWODE continues to believe strongly that for the plight of human Rights to improve in Teso region and elsewhere, amongst other things, the issue of bride price so called wealth, must be squarely addressed. Efforts have been initiated by TERREWODE, like Community Human Rights training and mobilization of self-help groups of former victims of early forced child marriages. Such efforts, albeit, so far are still limited to a few of TERREWODE areas of operation and specifically, in Kaberamaido district. There are hopes to extend to the entire four districts of Teso region, dependant upon networking, availability and improvement of Terrwode's Resource clout.

### **Conclusion**

Lastly but importantly, ways must be devised on how to lessen or modify (in the short-run) and scrap off (in the mid and long –run) the burden of bride price/wealth from the parties involved in a marriage. This will go a long way in as far and wide as protection and promotion of Human rights, specially of the women and girl children are concerned. All this is in the parameters of the quest for development.

I salute you again for your attention this day ladies and gentlemen.

**INTERNATIONAL CONFERENCE ON BRIDE PRICE**  
**16<sup>th</sup> – 18<sup>th</sup> February 2004, Kampala-Uganda**  
**Paper by Peter Mugume**

**Topic: Education and Critical Consciousness on Harmful Social-Cultural Practices: Attitudes and Conception of Phenomena of Bride Price Among Undergraduate Students in Uganda (Research Based)**

**1. Introduction**

This is a research based paper focusing on university students conception and attitudes towards bride price. The study was originally supposed to be conducted at Makerere University, but by the time the researcher got confirmation from the organizers, the students were already doing their end of semester examinations, so it was shifted to the Uganda Christian University, Mukono.

Bride price is a common cultural practice in Uganda. This concept embraces the wealth paid to a maid's family when he is getting married to her spouse. It is usually in cash or kind (goats, chicken and cattle). Bride price appears to be a harmful social-cultural practice which subordinates women to inferior status in society and creates problems for men, but also has its cultural advantages.

Education is meant to empower people with knowledge, skills and correct attitudes towards life and work. It is meant to impart to the learners critical consciousness of their environment, integrity of character, morals, discipline and creativity, all of which is vital for progress at individual, community and national levels. The problem focused on in this study is that the phenomena of bride price is so deeply rooted in African cultures that it appears to be taken for granted even among the educated people. This is, in spite of its harmful potential in terms of affecting development, gender relations and human rights.

This study was a survey, with a sample of 44 students of social-sciences, in second year used. These were given a 32 item questionnaire, with open ended items to fill in. The results of the study are presented below:

**3. Results of the study:**

**Age of the respondents:**

a)	20-25 years	:	31
b)	25 years and above	:	9
c)	Not stated	:	4

**Gender of the respondents:**

a)	Female	:	27
b)	Male	:	15
c)	Not stated	:	2

**Ethnic background:**

a)	Baganda (U)	:	5
b)	Banyankole (U)	:	5
c)	Rwandese (R)	:	4
d)	Acholi (U)	:	3
e)	Banyoro (U)	:	3
f)	Karamojong (U)	:	3
g)	Bagishu (U)	:	3
h)	Bakonjo (U)	:	3
i)	Bahororo (U)	:	2
j)	Bateso (U)	:	2

k)	Samia (U)	:	1
l)	Ha (T)	:	1
m)	Langi (U)	:	1
n)	Batooro (U)	:	1
o)	Bafumbira (U)	:	1
p)	Zande (S)	:	1
q)	Lugbara (U)	:	1
r)	Bakiga (U)	:	1
s)	Bagwere (U)	:	1
t)	Alur (U)	:	1
U	=	Uganda	
T	=	Tanzania	
R	=	Rwanda	
S	=	Sudan	

**Religious affiliation:**

a)	Christians	:	38
b)	Moslem	:	1
c)	Not stated	:	5

**The meaning of bride-price definitions were given:**

a)	Transfer of wealth from a man's to a woman's family	:	4
b)	Gifts to a woman's family from a man's family	:	4
c)	Payments by a man's family to a woman's family in form of cash, materials or cows	:	15
d)	Payments from a man's to a lady's family as appreciation	:	11
e)	A reward from a man's family to a woman's family as a present for bringing her up	:	3
f)	An exchange / compensation process by a man's family for the loss of the woman and her services to her family	:	5
g)	Exchange of gifts between a man and a woman's family as part of cultural marriage practices	:	3

**Advantages of bride-price:**

a)	Respect for the woman	:	19
b)	Cultural way of expressing appreciation	:	18
c)	Marriage recognition and security	:	16
d)	Income/wealth for the woman's family	:	10
e)	Creates family stability	:	10
f)	Seals family relationships	:	9
g)	Respect for the woman's family	:	8
h)	Strengthens relationships between the partners	:	8
i)	Respect for the man	:	8
j)	Serves cultural and identity purposes	:	6
k)	Compensation to the girls family	:	5
l)	Can help the brides brothers to marry too	:	2
m)	It is a fair give and take process	:	1
n)	Promotes preservation of virginity	:	1

**Disadvantages of bride price:**

a)	Women lose their right to equal status	:	23
b)	Women are rated as commodities	:	18
c)	It breeds domestic violence	:	18

d)	Poverty for the man's family	:	16
e)	A very expensive affair, frustrating lovers	:	16
f)	It has been commercialized	:	12
g)	Promotes exploitation of women	:	11
h)	Failure to marry a spouse of one's choice	:	11
i)	Difficulty of divorcing for the women	:	7
j)	Cattle rustling and crime to raise money	:	5
k)	Strained relationships between families	:	5
l)	Selling off girls prematurely by greedy parents	:	4
m)	Late marriages for men	:	2
n)	Elopement	:	1
o)	Failure to get married	:	1

**Student's own rating of their understanding of bride price:**

a)	Adequate	:	28
b)	Inadequate	:	11
c)	Unsure	:	5

**Relevance of bride price:**

a)	Relevant	:	23
b)	No longer relevant	:	16
c)	Unsure	:	5

**Reasons given: relevant:**

a)	Formalising relationships between families	:	4
b)	Uniting families	:	6
c)	Appreciation of the girls family for bringing her up	:	3
d)	Maintenance of family stability	:	4
e)	Cordial part of our social culture	:	2
f)	Needed for approval of marriage	:	1
g)	Good but needs to be streamlined	:	1

**Reasons given: not relevant:**

a)	It is commercialized, money oriented	:	7
b)	Reduces women into commodities	:	6
c)	It is abused for personal gain	:	7
d)	It is wastage of time and resources	:	5
e)	It is outdated, discriminates and subordinates women	:	5
f)	It justifies abuse of women's rights and domestic violence :	:	4

**1.11 Bride price and oppression of males:**

a)	Financial exploitation /burden	:	17
b)	Loss of maids they love	:	8
c)	Psychological stress	:	7
d)	Lack of respect if not paid	:	3
e)	Poverty after marriage	:	3
f)	Failure to marry	:	3

**1.12 Bride price and oppression of females:**

a)	Reduction to property status	:	17
b)	Limited rights, speech and property	:	9
c)	Victims of domestic violence	:	6
d)	Slavery/bondage in homes	:	6
e)	Forced and early marriages	:	3
f)	Many women stay single	:	2
g)	Social disrespect if it is not paid	:	1

**1.13 Bride price and exploitation of males:**

a)	Financial and material losses	:	17
b)	Poverty and debts due to high costs	:	14
c)	Failure to marry	:	6
d)	Heavy work to raise the costs	:	3

#### 1.14 Bride price and exploitation of females:

a)	They are overworked (rural areas)	:	19
b)	No freedom of speech and property rights	:	7
c)	Sexual abuse and marital rape	:	7
d)	Abuse of their rights	:	7
e)	They are condemned to poverty	:	2
f)	Domestic violence	:	1

#### 1.15 Bride price and reproductive health:

a)	Production of many children	:	12
b)	Early marriages and complications	:	16
c)	Sex slavery and marital rape	:	5
d)	Promotion of polygamy	:	1
e)	Provides room for re-marrying if the first wife is barren	:	1
f)	Control of sexual promiscuity among women	:	1
g)	Promotion of sexual immorality	:	1

#### 1.16 Bride price, STDs and HIV/AIDS:

a)	Marriage of young girls to infected men	:	10
b)	Men oppress women, cheat on them and infect them	:	4
c)	Polygamy encourages spread of diseases	:	4
d)	Spread of diseases through sexual immorality	:	4
e)	Spread of diseases through sharing/inheriting wives	:	1
f)	Delayed marriages may result in infections	:	1

#### 1.17 Bride price and domestic violence:

a)	Encourages wife battering	:	18
b)	Women are abused by men	:	17
c)	Women are rendered helpless	:	5
d)	Fighting and beating children results	:	4
e)	Women suffer in silence	:	2

#### 1.18 Gender labour roles:

a)	Women are abused and overworked in homes	:	22
b)	Women are discriminated, kept at home	:	5
c)	Men don't work but give orders	:	3
d)	No property rights for women	:	3
e)	Women are exploited as sex objects	:	3
f)	Men (in towns) overwork as bread winners	:	2
g)	Women denied the right to work (in towns)	:	2

#### 1.19 Bride price and women's self-esteem:

a)	Women are accorded low status	:	22
b)	Women are accorded property status	:	8
c)	Women are denied equal rights	:	5
d)	Women are given good status and protection	:	5
e)	Women have little say in homes	:	2

f)	Women are given a sense of belonging	:	1
<b>2.20</b>	<b>Bride price and men's self-esteem:</b>		
a)	Makes men develop superiority complex	:	12
b)	Makes men proud and arrogant	:	9
c)	Earns men more respect	:	9
d)	Gives men power over women	:	5
e)	Makes men who fail to pay feel inferior	:	4
<b>2.21</b>	<b>Bride price and poverty:</b>		
a)	Hardships for the new couple	:	20
b)	Man's family is made poorer	:	11
c)	Causes misery, crime and debts	:	8
d)	Wealth in the girls family improves	:	7
e)	Women are denied land rights	:	2
f)	Poor men just cohabit	:	2
g)	Poverty causes early girl-child marriages	:	2
<b>2.22</b>	<b>Bride price and women's rights:</b>		
a)	Women's rights are violated	:	20
b)	Freedom of speech is denied	:	20
c)	Property rights are denied	:	4
d)	The higher the price the more the respect	:	1
e)	Bride price empowers women	:	1
	<b>Bride price and men's freedoms:</b>		
a)	Too much freedom, abused by men	:	12
b)	Too much freedom from domestic work	:	7
c)	Worries over the money and wealth needed	:	2
d)	Bride price cost is dictated to men	:	7
e)	Worries over loss in case of divorce	:	2
<b>2.23</b>	<b>Bride price and child neglect:</b>		
a)	Women are left to care for children without means	:	18
b)	Girls are married off when still young	:	6
c)	Education of the girl child is not given priority	:	6
d)	Polygamy and production of many children are promoted:		3
e)	High charges leave little resources to cater for children	:	3
f)	After divorces, step mothers neglect the men's children	:	3
g)	Bride price ensures protection of children by the two families:		3
h)	Children suffer if parents take back the wife because of bride price:		2
i)	Women see children as men's children thus neglect them:		2
j)	Men abandon pregnant girls and their babies for fear of bride price:		1
<b>2.24</b>	<b>Bride price and child abuse:</b>		
a)	Forced child marriages	:	16
b)	Failure to marry and defilement	:	8
c)	Girls are denied education	:	7
d)	Wastage of resources on parties etc	:	6
e)	Much suffering after separation (step mothers)	:	3
f)	Encourages brutality in homes	:	2
g)	Children are protected	:	2
<b>2.25</b>	<b>Bride price and power relationships in homes:</b>		
a)	Perpetuation of oppression of females	:	20
b)	Exploitation of women's labour	:	16



c)	Makes males arrogant and disrespectful to females	:	8
d)	Men who have not paid are denied respect	:	3
e)	Promotes equal rights between males and females	:	1
<b>2.26</b>	<b>Property rights relationships:</b>		
a)	Men have rights over all property while women do not	:	20
b)	Women become part of a man's property	:	14
c)	Women are denied rights to property hence made poor	:	3
<b>2.27</b>	<b>The Commercial dimension of bride-price:</b>		
a)	Bride price is more commercial than cultural	:	16
b)	Transactions are dominated by men	:	5
c)	Women are degraded into commodities	:	4
d)	Making it hard for the poor to marry	:	2
e)	Government should set a minimum price	:	1
<b>2.28</b>	<b>Bride price and religion:</b>		
a)	Religion blesses bride-price	:	9
b)	Religion is against bride price	:	6
c)	There is no religious problem if it is a gift	:	6
d)	It becomes immoral once one involves money	:	4
<b>2.29</b>	<b>Bride price and education:</b>		
a)	Educated women fetch very high bride price	:	16
b)	It affects the drop-out rates of the girl-child	:	8
c)	Girls education not valued; they are forced out of schools to marry:	:	8
d)	Has led to many educated women failing to get married	:	7
e)	Has helped sensitise women about bride-price	:	4
<b>2.30.</b>	<b>Bride-price and early marriages:</b>		
a)	It promotes early marriages for girls	:	19
b)	Poverty makes parents sell their daughters at early ages	:	7
c)	Boy's marriage is delayed by bride-price	:	2
<b>2.31</b>	<b>Bride price and fidelity/faithfulness:</b>		
a)	Men are left free to have extra-marital affairs	:	22
b)	It binds women to be faithful to their husbands	:	14
c)	It promotes faithfulness to each other in homes	:	5
<b>2.32</b>	<b>Respondent's attitude on paying/having bride price paid for them:</b>		
a)	It should be paid	:	16
b)	It should not be paid	:	23
c)	I am not sure	:	5

### 3. Conclusion

The responses of the subjects to the issues presented above generally showed that the university students have a reasonably good understanding of issues related to bride price in their cultures and in the context of modern African societies. The responses showed that a good number of them are not taking the phenomena of bride price and its associated social-cultural connotations for granted. They are well aware of its harmful potential in relation to development, gender relationships and human rights.

# **BRIDE PRICE OR DOWRY!! BOTH SYSTEMS PERPETRATE WOMEN'S SUBORDINATION AND SHOULD BE ABOLISHED**

**BY MS VERONICA NAKIJOBA**  
**UGANDA GENDER RESOURCE CENTRE**  
**Plot 355 MAWANDA ROAD, MULAGO,**  
**P.O BOX 9933 KAMPALA – UGANDA,**  
**Tel: 077890511 or 077 474059 or 077350306,**  
**256-41-543897/ 8,**  
**Email: [vnakijoba@yahoo.com](mailto:vnakijoba@yahoo.com)**

## **Introduction**

**This paper is divided into several parts. It begins with definitions of concepts, followed by values underlying the concept of marriage related gifts and an analysis of how these gifts subordinate women in the family. The paper ends with recommendations. The discussions in this paper draw examples from the Baganda, one of the ethnic groups in Uganda and two states in India: Punjab and Rajasthan.**

## **Definitions of concepts**

I wish to begin this presentation with definitions of key concepts in the title of the paper.

*Bride Price* refers essentially to payments in livestock, household and perishable items or cash made by the man to the family of his future wife in order for the marriage to take place. On the other hand, *Dowry* is the gifts in form of property and cash that a woman brings to her husband in marriage.

*Subordination of women* is the paternalistic dominance women are subjected to by their male counterparts both in the private and public spheres of life. It refers to the low status accorded to women in society. There is voluntary acceptance of low status (subordinate position) in exchange for protection and privilege.

Though, the term Patriarchy does not appear in the title of this paper, I feel it is necessary to define it because bride price is one of the rituals which maintain the patriarchal system in society.

*Patriarchy* in its narrow meaning refers to the system historically derived from the Greek and the Roman law, in which the male head of the household had absolute legal and economic power over his dependent female and male family members. This patriarchal dominance of male family heads over their kin is as old as the third Millennium BC and was well established by the time the Hebrew Bible was written ( Lerner G, 1986: 238). Thus, patriarchy in its wider definition means the manifestation of male dominance over women and children in the family and the extension of this dominance in society in general. It implies that men hold power in all the important institutions of society and that women are deprived of access to such power. It does not imply that women are totally powerless or deprived of rights, influence or resources (Lerner G, 1986: 239)

*Paternalism* or paternalistic dominance describes the relationship of a dominant group, considered superior to a subordinate group which is regarded inferior, in which case the dominance is mitigated by mutual obligations or reciprocal rights. The dominated group exchange submission for protection and unpaid labour for maintenance. In its historical origins, the concept came from family relations as they developed under patriarchy in which the father held absolute power over all the members of his household, in exchange he owed them the obligation of economic support and protection. The same relations occur in systems of slavery.

The term patriarchy was adopted by contemporary feminists to examine the world from a new perspective. In this respect, patriarchy is the framework within which gendered relations of power are played out. It's the institutionalization of gendered inequalities in terms of access to and control over productive resources and the benefits of these resources.

*Marriage* is the mechanism through which the male –headed family is established. This is contrary to a belief held by most people that marriage is an institution. It is a ritual through which the family institution is established. Thus, marriage related gifts represent one aspect of the marriage rituals an individual goes through to enter the family institution. The gifts constitute one of the elements/rituals that establish legitimacy of the existence of a particular relationship.

### **Values Underlying Marriage related Gifts**

We need to note that rituals differ from institutions. While rituals constitute the same elements in terms of establishing legitimacy to existence of a particular relationship, they are more variable and therefore, more flexible to change. Hence the variety of things done in the marriage ritual across societies and religions. Institutions on the other hand are relatively inflexible and assume essentially the same form and structure across societies and over a period of time. The male-headed family as an institution within the patriarchal society bears common features regardless of where it is constituted. This is why regardless of who pays the marriage gifts as a ritual of marriage, so long as the family institution is male headed and operates within the framework of a patriarchal system, power relations are unequal between the husband and the wife.

Bride price is one of the elements that maintain the patriarchal system in society by giving the male-head of the family ultimate decision-making powers within the heterosexual family. He is the unquestionable head of the family, and the lineage. Cultural and religious systems of African societies that practice bride price reinforce the dominance of male status in this kind of family. For instance, in Uganda, it is a pre-requisite for church marriages, for the family of the bride to avail a letter accepting their daughter to get married to that particular man. In many societies this letter is written after the rituals of the traditional marriage have been finalized, payment of bride price is the most important among these. Since the settlements are done between the male relatives of both families, the bride walks to the altar in the company of a male relative either the father or brother.

The values underlying the practice of bride price are deeply rooted in cultural and social attributes to men and women. Society has allocated the male, the provider, pro-creator and protector roles as opposed to the woman whom society expects to be passive, and waits for the man to provide. The role of the pro-creator is closely linked to masculine sexuality. The woman is seen as the vehicle for reproduction. This is true in Buganda, children belong to the totem of the father not that of the mother and it is reinforced by sayings like “omwana womusajja” meaning “the man’s child” or “yamuzaliddeyo omwana” meaning that she has produced a child for him.

Under the protector role, the man is viewed as a fearless and courageous person who protects the children and the women in the family including the wife. This is based on the female and male traits accorded to men and women. Women are assumed to need protection because they are believed to be weak, feeble, have less thinking capacity, are soft by nature, incapable of venturing out alone, have no tolerance to withstand adversity and are weak-hearted while men are strong and courageous. However, linked to the need to protect women is the need to control them. Many women in India are still domesticated because it’s a standard of good discipline for a woman to keep indoors. This is also true in Buganda. A good wife is one who keeps within the home and should seek permission from the husband before she goes out.

Women in communities that practice bride price earn their place in society because they give birth to children, who are vital for the survival of the human race and specifically the husband’s lineage. In Uganda, just as in other African societies, the more children a family has, the more laborers available to that family during planting and harvesting and the more food or cash crops available for sale. The same beliefs are held with regard to security during old age. Such attitudes, while condemned by the modern sector as outdated and dysfunctional, are actually sustained by modern economic structures. Some current development policies even contribute to the maintenance of conditions that make parents look at their daughters as a source of wealth to generate family income!! (Schuler, 1992: 159). The system of bride price is sustained by the perception of women’s economic worth in relation to their childbearing abilities.

**Once bride price is paid, the woman and her child bearing and earning ability is entirely owned by the husband. That is why in the event that she fails to produce children or if she leaves her husband and returns to her family, the bride price has to be paid back! The value of the woman in terms of bride price depends on whether she is married when a virgin. If she is married a second time the loss of her virginity impairs her value even if she is able to bear children ( Schuler, 1992:159)**

I would like to point out that the value underling this practice initially in some African communities was purely to thank the family of the bride for raising her up. These were token gifts compared to the amount of merchandise taken to the homes of the brides in the name of bride price today. However, still one wonders why thank the family of the bride alone. It was so because the gifts were regarded as compensation for the loss of this girls labour by her family and for the children she would produce for the other clan.

Today there is a belief among many people that bride price has become commercialized by both the parents and the persons getting married. An element of competition and showing off has been integrated into this cultural practice. For instance, in Zimbabwe in the past a hoe was paid to the family of the bride as merely a token of respect. This hoe had an iron head and would be worth Z\$ 15,000 ( 1992). The high financial value placed on a woman's child – bearing capacity does not protect her from abuse in the home because she is regarded a part of the man's property. I wish to state that the practice has gone through a lot of evolution and today it is highly abused by society.

In India the amount of dowry raised by the family of the girl is a crucial factor in attracting a husband of suitable quality. Marriage related gifts enable parents to have a big stake in the choice of the partner for their children. In India, if parents want their daughter to be married, they must provide a substantial amount of dowry to be able to attract a suitor.

In some instances, dowry and its adequacy have proved to be a life and death matter for women. Women are subjected to family violence by the husbands and their relatives in the hope that their parents will be induced to part with more dowry in form of money and possessions, even though the original dowry has been paid. Many women commit suicide or are murdered by their husbands and their relatives, thus freeing him to remarry and thereby acquire another dowry. These deaths are usually attributed to cooking accidents because of use of kerosene stoves in the kitchen. Deaths by suicide or murder arising out of dowry demands are frequently called " bride burning". It was against this background that the payment of dowry was outlawed in India. In 1961, the Dowry Prohibition Act was passed by the Central Government as a result of pressure from women rights activists. However, the implementation of this Act fell short of some good strategies that it had little impact in reducing the practice of offering and accepting dowry. By 1990, it had not had significant impact on the practice in many parts of India.

#### **An Analysis of Subordination of Women as a Result of Marriage related Gifts**

Through the payment of bride price, men gain control over the productive and reproductive capabilities of women. The family institution is structured in such a way that it perpetrates gender division of labour, reinforces beliefs in female inferiority and imposes behavioural rules that curtail women's abilities to exercise those human rights to which they are entitled to as human beings.

Women's reproductive capacities are controlled, managed and exploited for essentially male interests. Due to payment of marriage related gifts, the extended family of the man acquires control and ownership of the wife, since the clan participated in collecting the gifts in kind or cash terms. The reproductive capabilities of women are appropriated for purposes of continuing the man's lineage. The children born to the marriage belong to the man's lineage and bear his name. A woman's value is measured in terms of how many children she is capable of bearing to that marriage. Failure to have children in a marriage is always blamed on the woman and bride price paid for a barren woman is considered wasted. Consequently, she is subjected to a lot of domestic violence for being unproductive.

Bride price makes women's reproductive rights and freedoms violated by their husbands. Through the payment of bride price, the wife belongs to the whole clan. Due to the pressure exerted on the husband by his clan to raise as many children as possible to extend the lineage, she does not exercise the right to decide on how many

children to have, when or whether to have them or not. Bride price reduces women to mere commodities transacted across families for the purpose of reproducing children for the husband's lineage. In this respect, the practice contravenes the Convention on the Elimination of all Discrimination Against Women 1979, Article 16 (1) e

*"... the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights"*

Bride price undermines women's ability to exercise their reproductive rights as enshrined in many International Instruments that promote women's rights.

Because of the payment of bride price, the woman loses her entitlement to say no to sex demands from the husband. In India, manliness is associated with power, control, the exercise of legitimate violence, group influence and male sexual prowess (Mardangi). This Mardangi is patterned around control over female sexuality and reproduction. It includes bodily access and aggressive sex. However, I wish to emphasize here that the sexual anatomy of women also makes them vulnerable to marital rape.

Society in India exercises control over women's bodies in the name of protection of group purity. Control over women's reproduction and sexuality assumes significance in the context of purity of identity, whether group or family. In the traditional society of the Baganda, if a girl got married when she was not a virgin, her parents and the extended family particularly the paternal aunts shared the blame. There is collective responsibility in maintaining the purity of family lineage though, unfortunately done through the control of female sexuality.

In India, within the domestic sphere, masculinity is control-oriented whereas in the public sphere, masculinity is more influence oriented. A man who has status and can exert influence over other men in the community is described as powerful. Domestic masculinity is expected to support public masculinity. Society believes that a powerful man must have an obedient wife and a household that caters for his needs. For example, a sick wife is expected to serve tea and food to the man's visitors or relatives. In addition, if the wife questions the husband or disobeys him in front of outsiders, the husband has a legitimate right to beat her. Thus, aggressive masculinity in the context of the family is justified in case of sexual infidelity or insubordination by the wife. Violence in the home is a norm rather an aberration. The co-existence of bride price and the totem system in Buganda, interplay to perpetrate gender inequalities in society, which subordinates women both in their parents and in matrimonial homes. There is a gendered difference in perspective and attitudes towards the sex of children born in a family. Societal beliefs regard the boy as the potential contributor to the family income and well being both financially and through producing children. A girl on the other hand is assumed to produce big sums of money through bride price and thereafter will contribute nothing to her family of origin. Thus, money is more readily invested in male children in terms of food, health care and education since they are seen as an investment, which will yield consistent long-term profit. The boy child gets the best in all respect because what parents invest in him will be "reaped" during old age. This treatment towards the girl is based on fear. They are not sure whether they will be able to get anything from the girl during old age, because once bride price has been paid, the husband will have control over the earnings. This is why until recently even in Buganda, fathers never used to give land to daughters. They feared once she got married, this land would belong to both of them or the husband would eventually take over its ownership yet he did not belong to their clan. However, today there is a positive trend in this regard. Some fathers give land to daughters but they give them a small piece just in case the marriage fails and she returns home.

We see the same trend in the Indian society. In Punjab and Rajasthan states, peasant societies are highly patriarchal and have a strong male child preference. In this community, land is an important economic and political resource. Male children are valued as the inheritors of family land. This male child preference is reflected in the high masculine sex ratios of peasant communities. For example, in Punjab, the Jat community has historically had a sex ratio below that of the state as a whole. In some cases, selective abortion is practiced so that the family has few girls.

Recent studies indicate that violence against women in general and domestic violence in particular is intricately linked to payment of marriage related gifts, whether bride price or dowry (Schuler, 1992: 10). Through these gifts, the man gains proprietary rights and legal control over the wife. Having paid bride price for her or been

paid dowry for, in both scenarios the husband has absolute power over the wife. He looks at her as part of the property in the house or the property she came with during marriage.

In both communities, women are largely subjected to domestic violence. In a household study done in 2000 in India, nearly one in two women reported experiencing at least one form of domestic violence. Over 40% of the women reported being slapped, hit, kicked or beaten by their husbands (INCLEN, 2000 cited in ICRW, 2003: 3). Still in both communities, there is widespread acceptability of domestic violence as normal behaviour by the husband. Furthermore, there is a set of cultural beliefs and attitudes towards wives' behaviour intended to shift blame from the perpetrator of violence to the victim.

There is a widely acceptable belief that, having paid dowry for a wife, the husband has proprietary rights over her. He can reprimand her through beatings and verbal assault as he deems necessary (Schuler, 1992: 161). It is because of this view that most societies promote the notion that the private is apolitical, because he paid for her, whatever he does to her is a private affair between the two of them. It is still due to the proprietary rights the husband has over his wife that in cases of domestic violence blame is shifted from the perpetrator to the victim. It is assumed that the wife provoked him or did something wrong that warranted that punishment.

Payment of bride price puts a very strong social pressure on women to stay in abusive families. This is influenced by the fear that once bride price has been paid, if a woman returns to her family the bride price has to be forfeited. Women are often encouraged to stay in abusive families because the families are not in position to pay back the bride price. Bride price puts women in a position of social and economic dependence on men. They feel powerless and do not believe they can change their own situations.

Due to payment of bride price, in Buganda, decision making powers are still to a large extent vested in the hands of the man, who is regarded as the family head. This is partly based on the notion that he is the one who pays the bride price. Though in India, it is the wife who pays dowry, patriarchal culture remains largely intact in many parts of the country particularly rural areas. Decision making in the family is still absolutely in the hands of the husband. For instance, a study carried out in Rajasthan, revealed that 13% of women are not involved in any decision-making. 81% and 83% of women respectively need permission to go to the market or visit friends or relatives (ICRW, 2003: 7).

Thus, in India just like in Buganda, men are supposed to take most of the decisions in the home. In some cases, in India, the husband's family dictates dressing styles for the daughter-in-law to reflect family status.

In India, though, the woman's family pays the dowry to the family of future husband, once in the home, the husband takes over the role of provider, protector and pro-creator. The role of provider is understood as being a hard worker through earning money, and providing social status for the family. Women are not expected to go out to work. According to a 35-year-old male respondent in this same study, the most critical aspect of performing the provider role and ensuring that women did not have to go out to work, said "a man is the one who earns and a woman does the household work." This quotation indicates a clear gender division of labour within the home based on female and male identities located in the structure of gender relations. Women are relegated to the domestic sphere. The fact that they pay dowry to the future husband and his family does not transform their status in the family hierarchical structure.

In Buganda, men restrict women's movement and confine them to the home. Having paid bride price for her, the husband could demand that she never sees her own family again and that she pays no allegiance to them in any way from the time of marriage onwards. The payment of bride price means that she ceases legally to be a member of that family. That is why in Buganda, fathers never used to give girls land or build today what they call "Servant quarters." The aim was to discourage daughters from running away from their matrimonial homes. Other practices among the Baganda reinforce this notion. If there is an occasion for example the last funeral rites or a wedding of a close relative, the woman's family has to write an official letter requesting the son-in-law to let his wife come to her parents home!

In Buganda bride price operates against the backdrop of a strict totem system, every person in Buganda has an animal or plant totem of some kind to which he/she belongs for life. Upon marriage, a woman loses ties with her natal family because of bride price but she does not become part of the husband's totem and remains an outsider in her husband's home for the rest of her life because of the totem system. She does not actually participate in clan meetings, if she is allowed to attend it is only as an observer anyway!!! She is not given a

name of that totem, instead she becomes “ Mukyala Mubiru” meaning Mrs Mubiru. Her economic and social position is entirely dependant on the existence of her marriage. This is true to the extent that when the husband dies and the marriage ceases to exist the woman under customary law has no right to her husband’s property that remains in the family. In most cases relations between the widow and the late husband’s relatives are cut off. They cease to look at her as one of them. This is exemplified by families affected by HIV/ AIDS. If the man dies first, when the widow gets bed-ridden her in-laws rarely nurse her, instead they send her back to her family. The fact that the economic gain out of girls benefits their families rather than the girls themselves makes bride price have far reaching consequences related to domestic violence.

From the above analysis it is clear that payment of dowry by the bride to the family of the future husband entitles him to the same privileges that exist in societies where the man and his family pay bride price to the family of the future wife. In both systems, it is believed that women should be sexually available to their husbands. Denial of sexual entitlement often results in violence in the family. In India it is also believed that forcing a woman to engage in sex enhances a man’s sexual satisfaction. One of the respondents in the study quoted above said that if a man forcibly has sex with his wife it gives him more pleasure, since that which is attained easily does not give pleasure.

### Recommendations

Bride price should be abolished in Uganda. Knowing that bride price and dowry are controversial issues, we should conceive the task ahead of us in cautious terms. This recommendation has been put forward by earlier studies and processes geared towards legislative reform in family law in Uganda. For instance, Brown (1988) noted that while we agreed that, whatever the original merits of the customs of bride price, it is at present abused, especially in regard to the very large amounts demanded. However, I wish to recommend that people should be allowed to take presents to their in-laws as they wish, but not in an institutionalized manner. To this effect, I encourage women also to take gifts to their in-laws as a token of appreciation for the big job they did to raise your husbands.

Introduce new practices aiming at replacing the current system with a fair one in which the newly weds would be presented with gifts from both families so as to empower them with resources to start a new family.

In circumstances where bride price has been paid, in the event of separation or divorce, the goods should not be returned by the woman’s family. Thus, the return of bride price should be also abolished. In some communities in Uganda this practice is dying out already, for example in Buganda. However, I am aware that in the rest of the country, particularly the northern, eastern and western regions, this needs a complete revolution of attitudes of the people before such a change is acceptable and is implemented successfully.

Dowry should be outlawed in countries where it is still legally recognized.

The Women’s NGO Coalition on the Domestic Relations Bill (DRB) in Uganda should work hard to incorporate these recommendations in the DRB and in any subsequent amendments that will be made to this law once it is passed

Implementation of the above legal reforms will require much advocacy like public education, research, and lobbying policy makers and opinion leaders at all levels to transform people’s attitudes and social norms about bride price. This also calls for dialogue between women and men within families, communities and the various organs of the judicial system. In other words, this should not be seen as a campaign to be undertaken by women alone.

Structures that promote violent masculinities can be opposed by those that promote masculinities based on democratic and human rights ethos. To undermine violent masculinities in men and their social relations, historically institutionalized processes need to be dismantled and social structures addressed.

The problem of violence against women related to bride price should be viewed as an important part of a national policy of social justice for the protection of women’s human rights.

Legal reform alone cannot be relied upon to eliminate practices, which are deeply rooted in culture and the whole social fabric of society. Marriage related gifts could only be eradicated when there are fundamental societal attitudinal changes at all levels. This can be achieved by a combination of short term and long term measures which aim at placing women at an equal footing with men in all respects. These measures include education, effective use of media and clear commitment from Government and the international community. Programmes intended to eradicate bride price should not condemn the practice legislatively but also ensure that legislation is implemented in good faith. It should not become a campaigning issue. Thus, efforts geared towards the eradication of bride price should be coordinated and comprehensive in nature.

Attitudinal change through public education programmes should also target children since they are the wives, husbands and parents of tomorrow.

We should be careful when the provisions for outlawing bride price are made. Definitions should be clear of what bride price is, and any other terms, which may deter the successful implementation of the legal reform. We should draw experiences from other countries where the practice has been outlawed, like India. This is what partly led to the failure of the implementation of the Dowry Prohibition Act in India in the first five years that followed the implementation of this law.

Strengthen the Child and Family Protection Units within the Uganda Police to handle cases related to bride price.

Members of the Local Councils should be sensitized and trained to gain the skills to handle cases related to bride price.

The Government process to streamline social protection in Uganda should come up with appropriate policies that will facilitate parents to have economic security during old age rather than looking up to their children. This will go along way in changing societal attitudes towards the sex of the child.

Government should invest more in the Universal Primary Education (UPE) and consider availing the same opportunities at secondary education and technical education. This will enable girls to acquire skills to be engaged in gainful employment. Thereby gaining economic empowerment and reduce dependence on men within the family.

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**MIFUMI INTERNATIONAL CONFERENCE ON BRIDE PRICE**  
**Sub Theme: Religious and cultural perspectives on bride price**

**Topic: Beyond the Cows-The Real Deal**  
**Speaker: BEVERLEY NAMBOZO**  
**Organisation: 104.1 Power FM Kampala**

**The Song That Died**

If my father had seen beyond the cows and into my heart  
If my father had listened to the words I did not say  
When I nodded my head and smiled  
At the money that was put to my pride  
If my father had opened his ears to my heart  
And opened his eyes to my soul  
Then he would have heard that the song of my life had died.  
When that price was put to my childlike pride  
The song of my life died out

If my father had seen beyond the cows  
And listened beyond the laughter over beer  
If he had looked beyond  
Not to the horizon  
But right at his feet where I sat  
Waiting for my summons  
To leave

Not only did I leave my homestead  
But I left the song of my life  
The song that died after a price tag was put to my pride

Daddy, what does a bride do at twelve?  
How does she breastfeed at thirteen?  
Does she take her child to the same school?  
Can she still cry?  
At her child's great grandmother's feet?  
Can she?

**Bride price: What is it?**

Bride price is one of the most common cultural practices related to love and affection in Africa and Asia. Its origins relate as far back as the biblical times and the Ancient times of the Egyptians, Romans and Greeks. Bride price is paid in a form of exchange between the family of a bride and a groom whereby gifts in cash or in kind are given to the bride's family in return for giving away the bride. It is quite similar to dowry, where in India for example, payment in cash or in kind is paid by the bride's family to the groom's family along with the giving away of the bride (Kanya-dana).

**Bride price: Where it began.**

- (i) One of the strongest held beliefs is the biblical one. The story of Rebekah and how she became Isaac's wife. Isaac sent his servant to look for a wife for him and after giving him clear instructions, the servant set off. The servant met Rebekah and her family and told him of his mission of finding a wife for his master explaining clearly who Isaac was. After the introductions, the servant then gave Rebekah and her family gifts of jewels of silver, gold and fine garments. After her parents asked her if she wanted to

go with the servant and she replied that yes it was her desire for her to do so, she left with the servant. On approaching, she saw Isaac at a distance and covered her veil to conceal herself. The same negotiations for bride price exist today in Uganda especially. The groom's family sends an entourage to the bride's family and similar negotiations take place until gifts are exchanged and the bride is finally allowed to leave to be with her groom.

- (ii) Ancient Egypt is another good example where bride price existed as a form of economic union. While many questions were raised like; What guarantee is there that the groom will not change his mind between the betrothal and the wedding? one's faith was put to task to accept the sum of money as a gesture of sincerity. The husband was the usual head of the household in the Ancient world.

(iii) In Athens, no woman could own anything more than her own clothing, jewellery and personal slave. When she was ready to marry, her father or guardian would choose a potential husband and negotiate with him the size of the dowry. The size of the dowry was a determining factor to the wealth of the husband to be.

### **Religion and Bride Price: The Real Deal**

- (i) The marriage of Rebekah and Isaac in the bible is truly one of the most peaceful and blissful holy matrimones the world has ever heard. Unlike modern day where a couple get to know each other for some time before they get married, Isaac's was purely placed on divine intervention. The presenter of this paper states firmly and clearly at this point that bride price and marriage create perfect harmonious results at divine intervention only. That divine intervention must not be man-made i.e. from performance of sacrificial rituals, manipulative charms or self-inflicting harmful practices but from a purity and chastity that desires to see an end full of bliss for that generation and the next. This is what the biblical story is about; Pure chastity.
- (ii) Rebekah was old enough to know when the right time for marriage had come her way. When her parents asked her if she was ready to go, she immediately replied in the affirmative. One other important thing to note here is that her parents first asked her because they valued her opinion and desires. They realized that marriage should start from an affirmation of the heart before the response from the mouth.
- (iii) Bride price based on true spiritual values is a right gesture because it does not inflict harm, it does not create psychological abuse, there is no defilement involved and it is respectful and sincere.
- (iv) There is an indescribably beauty of knowing that sexual union is for the pleasure of both the man and woman, which is what spiritual value attaches to marriage. A woman grows up whole both on the outside and inside with deep respect and love for her husband contrary to fear and helplessness.

**NB:** Most bride price practices do not attach value to the spiritual core of the negotiations and that is why a man often beats up his wife because he is still nursing the sores from debt.

### **Cultural values attached to bride price:**

- (i) The money is paid as a gesture of sincerity. That is the only symbol of faithfulness to the marriage, which is similar to the wedding and engagement rings used today.
- (ii) Because of the religious value added to it, there is a spiritual bond that the woman values to it.
- (iii) The Bride price provides a financial gain for the Bride's family in terms of gifts in cash and kind.
- (iv) A man will never be respected if he fails to pay bride price.
- (v) A woman is expected to live under the dominance of her husband if bride price is paid. This does not mean that the man will respect her. In many cases, he will own her as a piece of property.

### **Bride Price: What goes on.**

In Uganda, when a man wants to marry a woman, a delegation of about ten men go to the woman's home. On arrival at the woman's home, there is another delegation awaiting them. This involves close friends and family. The spokesman from the man's side informs the spokesman from the woman's side the purpose of the visit and then the negotiations begin. It is a formal arrangement with both parties dressed in elegant wear. The speaker from the woman's side mentions exactly how much their bride is worth in cows, vegetables, cash or any other form of payment. Traditionally, no food is given until both sides have agreed on the payment.

The occasion ends with festivity. The groom and bride eat together with the close relatives and silently the groom leaves with his bride.

### **The key figures in the practice**

Women are the main cause of bride price. A man needs to make payment in order to attain his bride. A woman has a price attached to her, which has to be paid. Many individuals express their discontentment at this practice because it involves haggling and bargaining.

Children too often suffer similar fate. In rural areas especially where education is not a priority for families, the fathers, in an attempt to get rich quick, marry off their daughters to as young as nine years old. This is common in Asia and Africa. Because of the cows and cash involved, this is a common practice.

The men are important too in this negotiation for a woman. It is because of a man's desire to get married that he looks for all possible means to attain his woman. Many men marry for sexual pleasure and that is why it is not uncommon to find one man with several women and lots of children besides some whose names he may not even know.

The bride's family who in most cultures, are the main beneficiaries. Predominantly, they receive a heavy cash donation as well as gifts of all kinds. In Uganda, the gifts can surmount to a cow, a goat, twenty crates of soda. Fifty baskets of groceries and fine garments made from satin or silk for the bride and her family.

The groom's family is a minority. Apart from bearing the burden of delivering the merchandise they are put to considerable humiliation before the bride is accepted to leave with her groom. The family has to put up a brave front during the negotiations, which are often interjected with humiliating remarks.

Close friends are also a part of this occasion especially in places where the extended family is highly respected.

### **Beyond the Cows- The Real Deal:**

In essence, if a man saw beyond the cows and beyond a wad of notes and into the window of his child's soul, maybe he would leave her to be a child. In special reference to girl children that are married off for money, a man should see what lies beyond his wealth. Greed makes men so short sighted that their eyes and ears merge into one big lustful bank account. In rural Asia and Africa many girl children still suffer. Taslima Nasrin, who was imprisoned for her book *Lajja, Shame*, because of her bold approach to the discrimination against women, writes about the secret yearnings of a woman from inside. Bride Price does not leave creative space for a child to discover her heart on her own body. Bride price does not leave room for a child to blossom and experience a few thorns in her life and allow the rain to seep through her and let her grow. A price tag on a child is the same as putting a price tag on someone's dreams, desires and passions. How can anyone put tags on an untrodden gem of a child's heart? How can anyone put a tag on an egg that is about to hatch and spread its wings and fly? If fathers saw beyond the cows, they would leave their young girl children to grow and discover life from the strength of their hearts and not from the strength of money.

#### **Bride Price: What nobody sees**

- (i) Sometimes the man is made to borrow a lot of money to pay bride price and as a result he is financially incapacitated during the first year or so of marriage. This results in him beating his wife as a payback method.
- (ii) The wife cannot run away from her new home because the man has paid quite a sum for her.

- (iii) Emotional torture at the subjection to an unwanted marriage.
- (iv) Emotional imprisonment. The woman is detached from the joy of falling in love and receiving strength from her heart to allow her to live desirably with her husband.
- (v) Lack of true spiritual value consequentially brings about hidden disasters of identity crisis, loneliness, inner weakness, yearning for peace.
- (vi) A child will grow up with a distorted knowledge of men. Her father will appear like a monstrous dictator and her husband a slave driver. She will grow up unaware of the true pleasures that a sexual union can bring and her knowledge of sex will be reduced to procreation only and satisfying her husband.

### **Religion: What it really does**

- (i) Religion is indiscriminate. It holds the strength of the whole world just from the love of one individual.
- (ii) It creates an inner strength that spreads its tentacles to the outside world.
- (iii) It allows an individual to see what the eyes cannot just from its simple truth.
- (iv) It allows a girl to sing an unsung song.

### **The Unsung Song**

Let me sing my unsung song  
 Just listen  
 Let me sing the song of my life  
 Listen

Do not interrupt me with your lust for attention  
 Let me sing

Listen to the tune of my desires  
 I want to fall in love  
 With the man who knows the verses of my heart

Where is the man who plays the guitar?  
 Do not send him away.  
 My unsung song must be sung  
 Our unsung lives must be lived.

My unsung heart must be loved  
 The man who plays the guitar knows the tune  
 Because he is the tune  
 To my unsung song  
 Listen to us sing

**A paper presented at the International Conference on Bride Price**  
**February 16<sup>th</sup> –18<sup>th</sup> 2004**  
**Makerere University, Kampala, Uganda**

**Patrick Ndira**  
Advocacy Officer  
Mifumi UK  
Brunswick Court  
Brunswick Square  
Bristol BS2 8PE  
Tel +44 117 916 6457  
Fax +44 117 916 6451  
Email: [patrickndira@mifumi.org](mailto:patrickndira@mifumi.org)

An appropriately disturbing but obvious question in our minds during this conference is going to be the question: can culture be wrong or bad? and if it is “wrong, or bad” why should many, women and men, identify with and defend it?

Culture constitutes the embodiment of beliefs and practices, the creation of people, but a creation, which shapes our relations and actions. Over time, people’s creations can be institutionalised into cultural beliefs and values to which people conform without question. The stronger the culture, the more resistant to change it is likely to be. If culture does become resistant to change, then the people will also be resistant to change! (Ed, Oakley, 1993, *It can be done!*). But the environment in which culture thrives is constantly changing, and this means that culture cannot escape reinventing itself to survive, lest it risks crushing the main vehicle of its expression, which is ourselves. Changing environments place a burden on our consciousness, awareness and values, which we in turn interpret through the domain of culture. If this domain is not as proportionately responsive or it remains static, then a point may be reached at which we may pose a moral question on the virtuousness of culture?

Bride price has been variously described as gifts, bridal wealth, token of appreciation, and bride price to mention but a few. Essentially it takes the form of an exchange of cows, and various other sundry commodities, for a wife. Although the beneficiaries of the items differ from culture to culture, the transactions are generally undertaken between the parents of the couple intending to marry. It is defended as the only appreciation or modicum of wealth to go to the woman’s family, as the legitimating factor for a marriage, which confers authority and responsibility to a woman in her new home, and secures family continuity, for example, in security for children born in the relationship. In sum, it is an essential element under customary marital rites.

Now if this were the case, one would assume that rather than take such an onslaught on bride price, this conference might as well dedicate the bulk of its weight to the defence of the institution?

However this question comes at a time when the world is confronting one of the biggest paradoxes in development. Poverty is deepening and widening its gloom and doom beyond traditionally recognised barriers and boundaries across the globe, and this, in spite of the fact that global wealth is reaching unprecedented levels (World Bank, 2002). For Africa, the glaring statistics on HIV/AIDS, violence and conflict, disability, famine and chronic hunger and their gendered dimensions, can not be over emphasised.

One impact of this process has been to demystify traditional dichotomous boundaries such as “north and south”, “east and west” as well as to break down barriers such as “sovereignty”, and concerns with legitimacy for NGOs in promoting participatory democracy. Other questions include values or culture and how these affect change, or the integration of diversity into the process of social change. It has also brought responsive action closer and closer to the point of need.

Another impact has been to widen the framework of accountability by making global citizen action possible while at the same time testing the strength and legitimacy of traditional ones such as states and the UN. With

the environment becoming very fluid, the premium on control has become upped leading to an exertion of more control across the world, sometimes bordering on tyranny as individuals and societies struggle to redefine their little niche.

At the same time many individuals and groups and particularly the oppressed are actively in search of new outlets for peace and security. NGOs for example, continue to voice strong opinions and have quite often brought pressure to bear upon governments and various powerful global forces beyond the reach of governments, in guaranteeing public interest and meeting the needs of their constituents. Sometimes the question is asked whether NGOs have the legitimacy to question culture? But we do know that we have individual rights to express our opinion about cultural matters that affect us, we connect with our vulnerable communities and have a duty to make known any injustices occasioned upon them, we also do have a right to provide expert opinion on the subject where we have this; our legal mandate also permits us to carry on the activities we are doing.

It is now clear that the contentious dissenting voices around issues such as sovereignty are now irrelevant and no body can hide behind them to perpetrate human rights abuses in the guise of preserving culture. This is the mandate that enables us to take on bride price at this specific point in time, in this first ever, International conference on bride price.

What is our position on bride price and Why?

I shall not take time off to delve onto the historical evolution of bride price to date, which is thoroughly covered under different presentations, but rather focus on the issue as it presents itself to us today.

Although evidence points to far reaching health, economic social and human rights and legal implications in the countries where it is practiced (WLSA, 2002; Lobola; Mifumi project, 1999; briefing paper on bride price), there is much silence in the way of bringing it to the forefront of public debate. It is our contention that a clear message needs to go to the public that bride price is an issue whose values constitute a direct violation of human dignity and freedom, and whose social practice is a hindrance to the enjoyment of human rights.

The institution of bride price, dowry and other related marital gifts constitute some of the major harmful traditional practices that contribute to the subordinate status of women, undermining their rights and the rights of their families, and communities, leading to a greater tolerance of gender violence and contributing to violent conflict, HIV/AIDS, poverty and disability. We gather here today to present evidence of this assertion.

We are told that bride price is meant to secure families, establish the identities of husband and wife and affirm the position of the woman in her new home and bring stability to a relationship by sending a clear signal to all about the integrity of any particular marital relationship. However it is clear that gender roles in Africa continue to undergo quite remarkable change. The situation for women may not have improved much or indeed may even have worsened in some areas like gender violence (UNFPA, 2002:State of the world Report; World Bank, 1993), however, in other areas like health and education, there is notable change e.g. on declining maternal and child mortality rates and enrolment rates for girls in lower primary schools (UDHS, Uganda).

The attendant social dislocation primed by among others migration and conflict, means that women have had to take on new roles previously the domain of men including being combatants, heads of households, and professionals in various capacities. In effect these emerging roles have come into direct confrontation with traditionally held values and practices of which the culture of bride price is one.

The urgency to unlock women's and girl's potential in contributing towards their own upward mobility and enjoyment of life, is one of the reasons bride price has become an issue, the two sides being the direct costs that arise from bride price related violations and abuses directed towards women and girls which hinder development as well as the indirect costs arising from the absence of their meaningful control over their lives, which is equally underscored by bride price. It is noteworthy that in almost all cases the transaction is negotiated by the extended family and in almost all cases, this excludes the views of the couple who however take primary responsibility to endure any bitterness if the transaction or the marriage goes sour.

In empirical terms, Africa is a continent that stands out as a bleak implosion on the face of humanity. While every single one of us and particularly the children all have a right to survival, development and the enjoyment

of an adequate standard of living, too often this is not realised due to the HIV/AIDS pandemic, famine and hunger, violence and conflict, disability and the need to work.

One impact of this extreme form of squalor is the wanton exploitation of vulnerable members of societies. Although the state has a responsibility to protect its citizens, their resources get overstretched and social issues that may appear relatively safe to ignore are relegated to low priority status. The exploitation takes many forms including early marriage, child labour, forced marriages, etc.

Taking the case of Uganda, for example, with falling average age of first marriage (Min of Gender, 2001: Facts & Figures); the largest population of orphans in sub-Saharan Africa (UNAIDS, 2000), Highest incidence of gender violence among 14 countries in the ACP countries (UNICEF, 2000); it is not surprising that in the countryside children are being disinherited of land paid as bride price or used to refund; children could also be used as stakes to secure payment, or could find themselves homeless as the pressure increases upon them to get married (Mifumi, 2003).

Now in a survey commissioned by Mifumi (Osuna. M, 1999) women were the most adamant about sustaining the practice and their reasons included the fact that this is the only form of reward to their families, the legitimating factor for their marriage, and a point of leverage which confers their authority in their new homes and one that they can utilise to negotiate with their partners. The danger with this is that it instrumentalises the original values of bride price and turns the institution into a tool for securing one's own interest. This may explain why in Uganda the forms are changing to include exotic breed cattle, cash, and very high value commercial commodities. It may also explain why the perpetrator is no longer solely men and the victims no longer restricted to women and girls; it is a problem affecting the whole of society. It should be our contention that gifts should be freely given, not demanded and not stipulated, as is the case with the practice of bride price now, a condition which should help us with our attempt to understand whether culture can be bad.

If we assume that those who propound the preservation of bride price as it is, believe it is a culture that is embodied in traditional ideals, to which all human beings ought to aspire, then a reform alone of bride price would be sufficient to guarantee a better status for women and children; however our experience at Mifumi at least points to another direction, to a volatile conflict between an apparently homogeneous culture and multiple and fragmented interests motivated by equally variable interests which in turn lend to the instrumentality of culture. If one takes this position, as we do, then the policy is not merely to reform the practice but a total overhaul of the institution. Such a rights based position advocates ground breaking leadership that we must realise through this conference. It also takes a measure of risk at the grass-roots to make unequivocal demands for safety, security and justice from the state for example through the use of test cases and legal aid work, while at the same time creating the space and strong vision for communities to pilot various innovations to catalyse the process of change and thereby speed up social transformation.

In Tororo Uganda, where this matter originated, we have felt the impact of refusing to initiate change. Many young people simply opt to elope, or under duress, pay very little bride price, very late. This severs relationships between the families breeding conflict and social disorder. We have documented various human rights abuses including extra judicial arrests, torture and extortion are exacted on innocent men and women caught up in problems involving the refund of bride price, which is a must if a marital relationship breaks down and a woman wishes to leave (New Vision, December 2003).

In Mifumi we are aware of the fact that the criminal justice system in Uganda is still beyond reach of remote rural communities, and that grass-roots issues such as bride price related problems are circumvented both by powerful and elitist interests not affected in any way by the very same issues, and by local individuals who stand to gain from the payment. The Mifumi project intervened by creating a mechanism for grass-roots people to exercise their democratic rights, a mechanism which led to the successful referendum in 2001, the formation of the Africa Feel Free network. Today, in this August gathering, we are pleased to share with you that aspiration as a way of building solidarity to tackle bride price across the whole of Africa as well as to bring the concern to the attention of the international Community.



# **THE PLACE OF CULTURE IN HUMAN RIGHTS AND DEVELOPMENT: FOCUS ON BRIDE PRICE AND OTHER HARMFUL TRADITIONAL PRACTICES**

**A PRESENTATION AT THE INTERNATIONAL CONFERENCE ON BRIDE PRICE AND  
DEVELOPMENT, MAKERERE UNIVERSITY, UGANDA  
Held on 16<sup>th</sup>- 18<sup>th</sup> February, 2004- Kampala**

**BY: ANN. W. NJOGU - EXECUTIVE DIRECTOR, CREAM**

## **WHAT IS CULTURE?**

Culture can be defined as that complex whole that distinguishes people of one community from another. It binds community members together, giving them a sense of belonging, identity, dignity, security and continuity. A community's cultural heritage consists of its traditions, beliefs, attitudes, practices, norms, morals, artefacts, folklore, literature, music, customs and more.

Some of the cultural aspects are supportive and nurturing while others are harmful and discriminate certain sections of society. Many communities in Africa, for instance have used culture to justify discrimination and various forms of violence against women. Some have actually dehumanized women, stifling their talents and aspirations and in some cases have threatened their very survival.

Most of these cultural practices have been used by communities as marks of their way of life. These could be observed in relation to birth, naming systems, feeding habits, passage from childhood to adulthood, marriage, death etc. While in some communities women who do not undergo these rituals suffer from psychological trauma, fear and stress. In some extreme cases they have been ostracized or isolated by the community. The following story is a clear example of how culture has been used to trample upon women and even sign their death sentences especially in this era of HIV/AIDS.

*Exactly a year after we had moved into our new house Onyango my wedded husband of fifteen years, died in a motor accident on his way back from our farm.*

*According to our tradition his body had to be taken to our ancestral home for burial. During the first seven days after my husband had been laid to rest, I mourned his death. The ordeal included isolation- I would not visit friends or relatives, nor would I carry anybody's baby. My hair was shaved clean, and I had to wear a black dress. At night I would sit on a stool with older women to make sure I did not lie down. On the eighth-day my late husband's relatives summoned for me to a "family meeting". There was need to arrange their brother's house after his death. I also had to undergo the final cleansing. They wanted to know among other things:*

- What had been left behind by their brother - bankbook, house plan, title deed etc.*
- Whom among them I was choosing as my husband (the man I would choose would sleep with me that night so that I could be 'cleansed')*

*I stood my ground and refused to give them any document. I also told them that it was my intention to remarry. This was the beginning of my struggle. While I was still in the village my brothers-in-law went to our house in the city and cleared everything, from the kitchen utensils to furniture and clothing. That very night a 'raura' (mad man) was sent into my bedroom where he raped me to "cleanse me." In shame and agony, I fled to my parent's village with my two children.*

*It has been one year since I returned to the city so that my children can finish school. I can't go to our farm in my husband's village. Last month, after two weeks of illness, I decided to go for an HIV test. I tested positive.*

The situation is made worse by the fact that many cultural practices are perceived as natural and unchangeable.

Women are more highly affected by poverty because of their maternal roles and responsibilities and their positions and condition in society, which are also culturally biased. It is women for example who are expected to feed their families and care for their children, the elderly and the sick. This has put a greater burden on women's ability to meet household needs. In order to make ends meet; most women have had to resort to desperate measures such as prostitution, thereby putting their health and that of their children at risk. In order to have a clear picture of how culture negatively brings about poverty prevalence among women, we must address certain issues i.e. culture and women's access to resources and culture and women's education. Such areas are key in empowerment of women and the reduction of the rate of poverty among women.

The rights to use and or control over land, forest and other natural resources are central to lives of women. The distribution of these resources is thus a major determinant of poverty and social status of women. The recognition of women's rights over these resources is more crucial. Cultural prejudices have played a vital role in preventing women to have control over resources.

Women remain alienated from land even when the state grants them full rights to inherit, purchase and own land – because of the patriarchal pressures against exercising these rights, because of the prevalence of the customary marriage, because of culture and customs supporting a patrilinear mode of inheritance prevail based on the myth of dowry as pre-mortem inheritance, because of the manipulation of the meaning of land tenure terms and because women experience highly constrained access to labour and other inputs necessary to sustain agricultural production. This brings about the gender gap in terms of ownership of resources thus women are left poorer than men are. This situation is more prevalent among women who are widowed or divorced or worse still the single mothers.

## AN OVERVIEW

Over the past twenty years, the East African countries have signed the Universal Declaration of Human Rights, which is a common standard of achievement for all peoples and all nations. In doing so they committed themselves to promoting respect for the rights and freedoms of men, women and children, which includes taking the progressive measures, nationally and internationally, to secure the recognition and observance of these rights both among the people of member states and among the people of territories under their jurisdiction.

The countries of Kenya, Uganda, and Tanzania ratified both International and Regional Conventions including and not limited to: Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); Convention on the Rights of the Child (CRC) and African Charter on Human and Peoples' Rights; and Convention against Torture (1984). While the states are signatories of international treaties and conventions, they have yet to fulfil the commitments set out in the conventions. The states have accepted international obligations and are willing to respect them, but they are not in a position to do so because they lack the infrastructure necessary to apply the standards contained in the relevant international instruments at the domestic level. Specifically, while the governments have provided the legal constitutional protections of basic human rights, they have hitherto not rendered those constitutional guarantees into specific substantive laws that would provide for the equality of men and women.

Unfortunately, this lack of governing infrastructures has resulted in unsafe and unequal lives for women in East African communities. The governments of Kenya, Tanzania and Uganda have failed to enact national legislations that provide effective prosecution and punishment of acts of violence and other discrimination against women. Inequitable divorce laws make it difficult for women to legally terminate their marriages and leaves them without property rights or access to sufficient resources; cultural acceptance of domestic abuse for instance perpetuates the cycles of violence in the home. The lack of affirmative action in government positions limit women's decision-making capabilities at the policy and governing levels. Unfortunately, one of the greatest challenges comes from the very fact that women's rights violations "threatens the legal boundary between the public and private realms of life"<sup>174</sup> For women in these communities, it is *essential* not only to

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<sup>174</sup> *Looking Ahead/Looking Around: Dynamics of Gender Partnership in Africa*. United Nations Development Program, June 2000, pg. 19.

promote their basic human rights, as conveyed in international treatises, but also to ensure that there are structures at the community, cultural, and governing levels to support these rights and ensure their health, well-being, and equitable access to peace and development.

By setting up national infrastructure, policies, and statutes for the protection and promotion of human rights, Kenya, Tanzania and Uganda will create a human rights culture that guarantees against the violation of those rights. These efforts can be effectively undertaken through coalitions of voluntary organisations, such as grass-roots and community-based organisations (CBOs), civil society organisations (CSOs), women's and human rights associations, research agencies, and other strategic alliances. It is through the growth of connectivity and integrated efforts between these like minded organisations that East African women can become empowered and can be guaranteed an equitable, fair, and just life.

### **Human Rights and Development**

*Women are critical members of society but more often than not, their expertise and potentials are lost because of a failure to give them access to society's resources or include them equally in decision-making process. We need greater emphasis on building health systems and developing human resources for health in Africa. While male promiscuity is endorsed by culture, the same culture does everything possible to snuff out women's potential for the fulfilment of their full sexuality through various forms of intimidation and female genital mutilation.*

There are many often-conflicting ideological definitions of development. Traditional development equated with economic growth and industrialization. However overtime, it has been realized that the concept of development should encompass improvement of peoples well being through a focus on economic and social justice than economic growth per se.

“A new development paradigm is needed that puts people at the Centre of development, regards economic growth as a means not an end, protects the life opportunities of future generations as well as present generations and respect the natural systems for which life depends.”<sup>175</sup>

*For a long time, development plans perpetuated existing social and gender inequalities and dis-empowered women.*

(ii) *Due to assumptions about gender roles, male ownership of land and other property made men to be the sole beneficiaries of new trainings and technology in agriculture though agriculture is predominantly women's work.*

(iii) *Access to means of production greatly enhanced for men.*

(iv) *Women's contribution to the economy unrecognized yet in Sub Saharan Africa women are responsible for 80 % of food production for home consumption and over ½ of agricultural production. However men are the ones in control especially with cash crops.*

*The shift to gender and development concept holds that gender roles of men and women lead to differences in needs skills and access to resources. For women to be able to make free choices and enjoy the benefits of development, gender equality must be central and non-negotiable goal.*

*Because of their social responsibilities for production and reproduction women must be at the centre a re-conceptualisation of development. More significant is their experiences of sustaining the cohesion of their families and communities while experiencing. We need to reclaim society by constructing new models of social advancement and new processes, which respond to peoples needs. The eradication of poverty and the reduction social inequalities depend on restructuring existing economic, social and political arrangements.*

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<sup>175</sup> United Nations Development Programme, “An agenda for Social Summit” Human Development Report, 1995, New York

***Beijing Platform for Action recognized education as a basic human right and essential tool for achieving more equal relations between women and men. It recommended among others,***

- ☐ ***Equal access to education***
- ☐ ***Completion of primary education by at least 80% of children with specific emphasis on girls by 2000***
- ☐ ***Develop non- discriminatory education and training for all.***

Poverty is pervasive in most African countries and impacts negatively on the capacity of persons to use the law and to obtain the protection to which they are entitled. For example in Kenya today many women have limited access to financial resources and have negligible borrowing power.

Most African societies prefer sons against daughters and when given the choice of educating either they prefer the son. Though education does not necessarily eliminate values held by society for such values are eventually transmitted into the educational curricular, it does however offer the girl child an opportunity to be less dependent on men in later years. Lack of education opportunities makes women still be depicted as passive and domestically oriented while men are depicted as dominant and breadwinners. This notion has not only limited women's choice but has also resulted various forms of gender-based violence.

### **Culture, Human Rights And Law**

*"If it were between countries we would call it war. If it were a disease, we would call it epidemic. If it were an oil spill, we would call it a disaster. But it is happening to women and it is an everyday affair. It is violence against women. It is sexual harassment at work and sexual abuse of the young. It is the beating or the blow that millions of women suffer each day; it is rape at home or on date. It is murder".<sup>176</sup>*

The persistence of traditional practices detrimental to the health and status of women have overtime been pegged on the failure of the concerned governments and international community to challenge the sinister implications of such practice which violate women's right to health, life, dignity and personal integrity. The international community remained wary about treating them countries deserving of international and national scrutiny and action. For a long time these were considered sensitive cultural issues falling within the spheres of women and family.

Therefore, all human societies have characteristics in common in relation to the positions and roles they ascribe to women. Most human societies are patriarchal and male centred, which implies that these societies traditionally cater for the rights of men. The Declaration on the elimination of Violence Against Women (1993) recognizes that *"Violence Against Women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men, and to the prevention of the full advancement of women, and mechanisms by which women are forced into subordinate position compared with men"*. Violations of women rights are often sanctioned by cultural practices and traditional customs.

*A culture can be force of liberation or oppression. Male dominated ideologies in Africa have tended to use culture to justify oppressive gender relations. But can also be a liberating dynamic force in African society through its various active institutions. Governments should repeal all negative stereotyped cultures that still hinder full advancement of women.<sup>177</sup>*

Despite their harmful nature and violation of international human rights laws, such practices persist unquestioned and take an aura of morality in society. Yet any equitable society cannot say to have attained full human rights if fundamental human rights of half the human society, women, continue to be denied and violated. Most of these cultural practices have been perpetuated for the benefit of the male counterpart. For instance female sexual control by men and the economic and political subordination of women and perpetuate

<sup>176</sup> Michael Kaufman, director of the international White Ribbon Campaign, on gender violence.

<sup>177</sup> African Platform for Action adopted by the Fifth Regional Conference on Women, Dakar, Nov, 1994

the inferior status of women and inhibit structural and attitudinal changes necessary to eliminate gender inequality.

For instance, gender based violence has continued to be the greatest obstacle to women's achievement of legal justice, hence curtailing their expression of their full potentials. Society has continued to sanction male dominance over women while the law continues to hamper women's attainment of social, economic and legal justice. Over the years since CREAM's inception we have witnessed women succumb to widespread forms of gender-based violence. Such violence and prejudices continue to justify gender-based violence as a form.

Many customary and statutory laws discriminate against women in area of marriage, divorce and inheritance. Polygamy is legal under customary law and although customary practices vary within the different ethnic groups, most use Bride price system previously said to constitute a bonding between families and mark of appreciation to the women's family, the bride price has now become akin to the purchase of wives and a justification for the subjugation of women.

The customary payment of bride price now gives the husband proprietary rights over his wife, allowing him to treat her more or less like a chattel. This is especially so because it equates the woman's status in marriage with the amount of bride wealth exchanged and not with her skills and abilities. In most cases the woman has no say even when the husband is on the wrong. Our culture also allows men to practice Polygamy as long as they are able to pay bride price this increases the chances of gender based violence as the man exercises authority to control the women.

The practice of widow inheritance whereby men inherit the wives of their deceased brothers is widespread. Customary law disregard women's rights and because bride price was paid they are community property and can be inherited by anyone in the family with or without consent. Their refusal to be inherited has resulted in disinheritance and/or physical violence. The inequalities in marital status and property ownership maintain women's economic dependency, a factor that increases their vulnerability to abuse in their homes and can become lethal where HIV/AIDS is involved. The continued failure of the governments to address such inequalities will undermine efforts to provide women with constitutional protections, greater political representation and improved access to justice.

The cultural and psychosocial connections between culture and violence, and the various systems of power in place affect male-female relationships and interactions. Among most cultures, there is a prevailing notion of women as caretakers of the family: they are responsible for reproducing children, preparing food and basic needs, and responding to the sexual needs of their husbands.<sup>178</sup> Complementing these views is men's own perception of themselves as sole providers for their families: they must defend, provide for and sustain their families. This role is one filled with the expectation of authority, power and responsibility.<sup>179</sup> This breeds a male-based society where men assume power and domination while females accept submissive and dependent roles in the family and society.

*"Every woman has the right to be free from violence in both the public and private spheres"* – Article 3, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994

*"The full and complete development of a country...require[s] the maximum participation of women on equal terms with men in all fields"* – Preamble, Convention on the Elimination of Discrimination Against Women, 1979

*"Governments 'shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage, and at its dissolution'"* – Article 23(3), International Covenant on Civil and Political Rights, 1966<sup>180</sup>

The committee on the Rights of the Child in light of Article 2 of the Convention on the Right of the Child has called upon states to recognize the principles of equality before the law and forbid gender discrimination including adopting legislative measures to prohibit harmful traditional practices.

<sup>178</sup> Tony Johnson, *Kenyan Men: Violence and Abuse*. Population Communication Africa, May 2002, p. 29.

<sup>179</sup> *Men against Gender Based Violence: A Report from a Regional Constitution...in Nairobi*, FEMNET, December 2001, p. 42

<sup>180</sup> *Free and equal? Women's rights as human rights*. The British Council, 2000.

Girls have suffered tremendously in the guise of early marriages and bride price. The practice of giving away girls for marriage at the early ages of 11,12,13 years after which they must produce children is quite prevalent amongst most African ethnic groups, the principal reasons being the girl's virginity and bride price. It is argued that young girls are likely to be virgins upon marriage a condition that is alleged to raise family status as well as the dowry to be paid by the husband. In some cases virginity has to be certified by female relatives before marriage.

The dowry price of a woman is her exchange value in cash, kind or any other agreed form such as period of employment. This value is determined by the family of the bride and her future husband. The woman's in-laws "gain" a pair of hands and children while her family get payment, which translates to greater economic security for other relatives. The price is higher if her virginity has been preserved notably though FGM.

### **Failed Action – States without Infrastructures**

There is need for the East African Community to take appropriate measures to address abuses from social and cultural norms, which are one source of women rights abuses. CEDAW obligates states to modify the cultural patterns of conduct of men and women, with the view to achieving the elimination of prejudices and customary practices which are based on the idea of inferiority or the superiority of either sex or on stereotyped roles for men and women. The African Charter on Human Rights obligates countries that have ratified it to write a progress report on the measures the governments have taken to implement the charter and the difficulties they experience. Unfortunately, while Kenya ratified the Charter in 1992 it has not written a single report to the Commission; Uganda and Tanzania have each written only one report. This elaborates the fact that the states have not made the implementation of the Charter's guidelines a national priority despite the critical need for more protection of basic human rights in their countries.

A discriminatory legal framework is one obstacle to ensuring women's human rights, especially when individual women are trying to escape abusive relationships. Women remain without adequate recourse to state protection whether in the form of the police courts (i.e. the governments have yet to criminalize marital rape). In addition, they have to face the social stigma of their experiences when at the same time attempting to prosecute their abusers. Biased officials convolute legal processes and the imposition of official and unofficial "fees" hinder women at every step. Few women have the resources and persistence to follow their complaints through to their conclusion; only the most exceptional violence against women cases make it to prosecution. There are also serious failings in the collection of evidence, lack of forensic resources in terms of equipment and personnel and few viable alternative shelters for battered women. Strong working network will be forged for all round assistance of poor women. In addition, Bills and recommendations on laws of marriage, divorce, children and inheritance are pending in parliaments and have not been passed; for example, the Domestic Abuse (Family Protection) Bill is pending review in Kenya, and the "Kalema Commission" findings are pending review in Uganda. Focused lobbying and advocacy will be essential to push for the passing of the bills into law and enactment of the same.

### **WAY FORWARD**

Fighting for the human rights of girls and women requires long-term strategies aimed at challenging prevailing culture and structures, and building accountability of governments to the people for their decisions through among others:-

- ❑ Applying pressure through public opinion and public actions such as boycotts and marches designed to raise awareness and attract media attention on the problem so as to elicit debates and action.
- ❑ Initiating lawsuits and pushing for change through diplomatic and political means.
- ❑ Cooperation - Networking and building alliances with Unions, CBOS, International, Regional, Local NGO's and government bodies to assess the situation, jointly develop viable plans of action, follow implementation and ensuring adequate monitoring of progress e.g. strengthening domestic laws on culture, push for more women to occupy decision making positions in governments, international trade and economic bodies

- ❑ Strengthen international conventions and instruments within national and regional governments through creating synergy for lobbying and advocating. This has shifted the interaction of NGO'S and the government from one of confrontation to one of negotiation where women have articulated their human rights needs.
- ❑ There is need to rethink masculinity and its manifestations as well as their self-perceived social responsibilities through involvement of men as partners. This also includes changing our cultural approach in dealing with cultural stereotypes that perpetuate insubordination of women in society. With increased self-awareness and active participation, Civil Societies have the ability to help change our culture to take an active role in ending the gender violence that plagues our country.
- ❑ These efforts can be effectively undertaken through coalitions of voluntary organisations, such as grass-roots and community-based organisations (CBOs), civil society organisations (CSOs), women's and human rights associations, research agencies, and other strategic alliances. It is through the growth of connectivity and integrated efforts between these like-minded organisations that East African women can become empowered and can be guaranteed an equitable, fair, and just life.
- ❑ CREAM recognizes that women's rights violations and gender-biased treatment runs throughout East Africa societies, both in its governance and in its cultural practices and social norms. Therefore, CREAM feels that a collaborative, cross-regional effort will be instrumental in affecting change for women throughout the region.
- ❑ Advocacy efforts are usually difficult to implement and are even more difficult to sustain after the first push. Given the political climate of corruption, the limited funding and government resources to support new or extended courses of action, community acceptance of women's inequality, and the ongoing change of the government actors and constitutions, it is important to build a united front to support each other and present a strong and clear voice that demands change.
- ❑ Through cross-regional efforts, lessons and experiences learned by one partner can be shared and implemented in other states. This is important in ensuring efficient and effective work and guaranteeing against the duplication of work; CREAM does not want to "reinvent the wheel" but utilize collective knowledge to implement best practices throughout the three-state region.
- ❑ An integrated Civil Society of like-minded organizations has proven to play a key role in the *process of change* because it is able to generate the energy, resources, manpower, and monitoring abilities that can be lacking at more institutional levels of the government, legislatures, and others. Indeed, UN-NADAF states that, unlike a state-centred approach, a network of NGOs has the advantage of flexibility, sensitivity to severe economic and political crises, close links to local people and therefore more direct knowledge of needs and opportunities, and the ability to foster grass-roots contacts. The "participatory" approach taken by groups of NGOs is also less impeded by bureaucracies and hierarchies, and is critical to effectively serving areas where funding and resources are limited.
- ❑ Silence or silencing, ignoring, sanctioning and cultural biases and violations against women will thus not change the situation. There is need for victims to cry out, there is need for institutions to cry out, and there is need for society to cry out about this vice. The crying out should be responded to, by hearkening and listening and taking action to prevent continuation and institutionalization of the vice.
- ❑ Change will come about when the question- what have you done, or what are you doing has been responded to by victim survivors, the perpetrators, those in authority, including the church and the society in general.
- ❑ Establish or encourage the formation of support groups for victims of violence and discrimination.
- ❑ Law enforcement procedures to be followed to enable women seek legal redress and devise community based mechanisms for preventing such forms of abuse.

# THE HUMAN AND ECONOMIC COSTS OF BRIDE PRICE IN BUGANDA

By: Nsubuga Rogers

## Introduction:

In this presentation I wish to discuss with you how the concept of bride price has evolved from a marriage gift of appreciation to an economic gain, business and a competitive show. As a matter of fact it has been turned away from its original good purpose it formally symbolized.

Bride price had a good meaning and cause to the institution of marriage. It gave value and importance to the wife to be (the bride). It also brought honour, value and respect to the husband to be, (the groom). However, it is now being misused for exploitative purposes as a quick method to enrich others.

## Background:

Traditionally a girl was not allowed or expected to go to a man's house for marriage before the two contracting parties negotiated a bride price or value befitting the girl/daughter intending to get married. These initial meetings involved putting a price label on the girl by the so called, 'selling' family. The interested parties would bargain in order for the selling family to reduce or compromise the bride price and other conditions demanded by the girl's family and relatives. During those olden days the boy's family (the groom), would be expected to help with their son's bride price since the couples were comparatively young and economically poor and undeveloped. The boys were depending on their parents' wealth to buy a wife. In most cases the boys continued to live with their parents on the same compound although in different houses, (huts). Most of the time these marriages were pre-arranged whereby a girl's input was not considered. Today we can say that pre-arranged marriages violated the rights of many women.

A girl would see the so-called "visitors" branching off to her family's homestead. Her role would be to welcome them and immediately return to the kitchen after greeting them. The visitors and the parents of the girl would be preoccupied with business, discussing their own "things". The girl would later on be called in after the discussions to be introduced to the visitors as a wife-to-be to one of them or to their son left at home.

The more girls one family had the more visitors would be seen trying to make their selections and bargains like in a market place. Many girls were married off in this manner against their conviction and wish. Many were as young as 13 years old. The best rich son-in-law took the girl for a wife whether one liked it or not. You can easily say that with bride price there has always been a kind of coercion and the marriages can be seen as a result of convenience rather than conviction.

Generally, as the economic conditions have changed face, cultures and various traditions are adopting to new modern demands responding to new social and cultural approaches. There is no doubt that MIFUMI is here to stay because it is lobbying for the right cause.

## The Politics behind Bride Price:

Bride Price was supposed to be a symbol or a token of appreciation to the family of the girl to be married off (the bride). It was not meant to dehumanize women as property to be owned, sold and bought off in order to satisfy men's selfish desires and egos.

Bride Price is being misused to abuse girls and women. Men tend to think that after paying the bride price women become our goods, services and personal property to be owned, mistreated and dumped when they have outlived their purpose and use.

Bride price should not be looked at as a symbol of ownership, nor a seal of (enslavement). A woman or a girl whose suitor has paid off her bride price is not to be co-owned by another man. It is not uncommon to find a man who has paid bride price for several women. (*This should not be taken as an attack on some religious beliefs*). However, several poor women are expected to be owned by one man . Even the Domestic Relations



Bill has turned a blind eye on this issue. I suggest that women also should be allowed to ask their husbands to have other men. Will a man who has paid bride price ever allow his wife to be co-owned with another man ? This is the Politics men use to control women.

Previously bride price used to be within the reach of every peasant before it was politicized as an economic investment in girls. These days people have gone to the extent of stealing in order to make historical impressive introductions in the name of expensive bride price presents.

We are told that in the olden days bride price would be returned in case of adultery. This was easy because bride wealth gifts and presents were affordable and manageable to be compensated by the girl's family. However, these days bride price has been excessively capitalized and commercialized in the name of modernization. This pompous behaviour of showing off wealth in paying off the bride price has left many would be couples to be senior bachelors for fear of making a poor show. This is enough to explain the everlasting presence and existence of the night girls on the streets. Women feel that it is unfair to be sold like slaves and goods to men.

### **Extravagant Introduction Ceremonies:**

Besides the initial meetings and negotiations between the interested parties before marriage, the first phase of bride price is sealed on the day when the girl introduces her husband to the parents and the entire family. Expensive Marriage presents of various values are offered to the girl's parents. This is supposed to be the bride price.

Some parents have been reported to have mistreated their son in laws delegations for not giving enough bride price in exchange for their daughters. Presents are no longer limited to a "cock", a goat or bark clothes in lieu of obtaining a wife.

You can imagine a human being to be exchanged for a price value of cows, and chicken, which costs 3,500/= (Three Thousand Five hundred Shillings only). Without presents like a chicken and a bulging envelope one may fail to get a wife.

### **The Political Economy in modern pride price:**

Historically bride price was intended to express appreciation to the parents and a fulfilment of cultural obligations; to create stability of the family and to seal the bond between the woman (bride), and the man (groom), who had paid the bride price.

Bride price inspired girls to be disciplined before marriage and after marriage. It persuaded them to hope for marriage in order to please their parents who would economically benefit from their so-called sale. Girls feared to elope with men before they had introduced them officially as their husbands. Such men would have no respect for their wives because they had no economic value attached to them.

In modern times, paying off bride price has been over exaggerated by expensive Introductions. It is like enslaving the girl for life because you have the so called legal cultural ownership over her. On the other hand the man tended to think that he has economic power over his wife. This is psychological satisfaction which is very false. It may not be easy for some poor families to repay the bride price to the Bride's family in case there was any gross mistreatment and violation of ones' rights.

After the man has impressed the girl's family the woman finds it hard and unbelievable to return home let alone to convince her parents that their son in law is bad. In such marriages the children if any have to suffer the consequences because their mother is an economic slave, not loved. The parents are always reminding their daughter not to divorce the man. They usually look at this as shame. In such a situation the man sees himself as a businessman who has invested money in his wife whom he paid for exorbitantly.

Besides making a name in the paid bride price some couples suffer from economic and psychological tortures after the expensive introductions and weddings. Money, which would have been used to empower and develop

the young couple in their new home, is lavishly spent on bride price. After the memorable bride price functions the couples start in a vicious circle of poverty in order to settle their debts. The woman has to work hard in order to pay back the money, which bought her.

Bride price in some parts of our country is supposed to be an ongoing process. This exposes the young couple to a number of problems and economic constraints from the side of the wife forgetting to solve their own problems.

The love of wealth in terms of bride price has tempted many parents especially men to marry off their daughters at a tender age to meet the family's financial needs. This has deprived many girls of going to school and a better future. Their rights and decision making is abused.

At times young girls are exposed to HIV/AIDS after being married off to older men probably widowers who pay a handsome bride price. In such cases you can't rule out defilement cases, which go on unreported. Others die in child labour because they are too young to cope with such experience at a tender age. At times you end up having girl child mothers incapable of managing their babies.

Some parents are seeing marrying off their daughters as business after they are paid huge sums of money as bride price/wealth in exchange for their daughters. It is high time this kind of practice stopped.

We call upon all people of good will to join hands with MIFUMI and other Human Rights Activists the World over in order to save our girls and women from this cultural menace and mess of bride price.

#### **The Way Forward:**

- ❖ There is need for a multi-sectional approach intervention and to register all cultural marriages as a way of curbing down on forced marriages, which are encouraged by bride price.
- ❖ Bride price should involve the girls' input. She should be free to say NO to marriage proposals antagonizing her future. To me this is what the age of consent should mean.
- ❖ Compensation for bride price should be abolished because it makes women suffer silently as slaves.

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## **THE HISTORICAL EVOLUTION OF BRIDE PRICE**

**Presented by: S.P.O. Oboth**  
**CHIEF ADMINISTRATIVE OFFICER/TORORO**

**Introduction:**

According to the Advanced Learners Dictionary “a bride is a woman on her wedding day or just before or after”. It also defines price as “ the amount of money that you have to pay for something”. Bride price is then ideally the amount of money a man has to pay to secure a girl or a woman into marriage. In the days of yore in our traditional African society, bride-price was paid at the time of marriage. Though what was paid was strictly not money so as to constitute price, nonetheless we shall assume it to be so since money economy had not yet entered traditional society. When talking about African society I cannot claim to speak for the whole of African let alone the whole of the Ugandan society. My area will be mainly the society that lives in Tororo District and those that live within their neighbourhood.

The political social and economic state of African societies before the coming of the explorers, missionaries and colonialists was different. Politically some societies like the Baganda, Banyoro, Batoro and Banyankole lived under kings. The kings were powerful and governed under a centralized system. They appointed Chiefs to assist in administering their kingdoms under their directives. That is why we heard of positions of Saza, Gombola and Muluka etc. being held by chiefs at different hierarchies. All the positions of governance were held by men. They were rich and powerful as the kings appropriated to them large tracts of land and other properties. In other egalitarian societies like the Jopadhola and the Iteso, leadership was through elders in the clans. The roles of the clan leaders were mainly to settle disputes but most of the other issues were handled at family levels. All leadership positions within the clans and families were also held by men only. Disagreements within the clan gave rise to splinter groups.

Socially men were at a higher status vis-a-vis the women. Men determined the dos and don'ts in society and biasness was tilted in favour of the men. Splitting firewood, cooking, collecting water from a well and sweeping a house etc. was considered too demeaning for a man. Women had very little say in society especially in public affairs. Women were supposed to be submissive especially to their husbands. They were expected to greet the men while kneeling or sitting down. During social gatherings they were to find seats on mats or grass as chairs and stools were a preserve for the men. Women were barred from eating such nutritious food such as chicken, eggs, pork or some parts of the carcass of a cow or a goat.

Economically a woman owned no property of her own except perhaps her clothes. Whatever she contributed during her married life belonged to the family but the husband had a final say over it. Girls were disinherited from the property of their fathers. A woman's role was in the garden to provide family labour, to cook food for the family, produce and raise children, take care of the family, train young girls in preparation for marriage and ensure that she kept to the rules and regulations and customs governing her society as set up by the men elders. The traditional society was and is still patrilineal. Marriage meant re-allocation to the homestead of the man. A man could marry many wives and if he also had many children then he was considered wealthy and powerful. His homestead would be referred to as “a large home”. With an army of children and wives he had a bigger area of control and dominance and was therefore socially upgraded, secure and economically sound. His big family could provide farm labour to produce a lot of food and was secure in case it was necessary to physically settle it out with his neighbours.

Lastly the African believed that after death a person resurrected through his progeny and it was therefore important to marry a wife to fulfil this desire.

**Bride price as a social identity:**

As stated earlier on, prior to the coming of the colonialists and missionaries, church and state marriages were unheard of. The societies had evolved their own means of dealing with this matter. As people got into marriages so as to sustain posterity, the question was where was the marriage to be consummated! The patrilineal nature of the society required that the bride re-allocate to the homestead of the groom and be under his care otherwise how would everyone else recognize that the young woman was now the wife of so and so?

Among the Jopadhola and the Iteso marriage was arranged among families. The “bride and bride groom” were identified at an age as early as about 8 years. In the search for a wife family values were looked at. This inter-alia, was being well to do, hard-working, free from criminal background and devoid of chronic diseases such as leprosy etc. Soon after both parents agreed, the “bride” received a copper bangle (atego) from family of the “groom” which was put on the hands of the “bride” as a sign of engagement. When the girl matured and was taken in marriage, her parents received cowry shells and some traditional hoes “kwe nyamusa”. These were, merely gifts of appreciation. The issue of animals or money did not arise.

As the country got into money economy, people began to attach economic value to what was previously offered as gifts to the girls parents and hence the issue of animals and other items were introduced. The exact number of what was to be paid was now subject of negotiation among the families. A chief’s daughter would be worth much more than that of an ordinary peasant because it was believed she was of a higher social status. Though ordinarily marriages were arranged by the parents, some were through abductions. Either way no consent of the bride and bridegroom were sought. Nonetheless bride price had to be paid. Once this was done it was now conclusive that a marriage contract had been entered into. Socially the society would now take the couple as husband and wife.

If for some reason the marriage broke, the girl’s parents were obliged to refund the bride price they had received. Normally one would be expected to pay back exactly what he received though consideration would be taken for the number of years she had spent in marriage and the number of children she bore. The refund of the bride price would be a social indicator of the end of the marriage and the woman was free to remarry. Though marriages are now celebrated in churches, mosques or in state, traditional marriages are recognized in law. Even in church or state marriages bride price blends very well with other requirements.

Bride price also played a key role in a man’s social standing. Many people, who had no means of raising the bride price demanded, remained bachelors. Such persons’ social standing was very low because in African traditional society, a man who remained unmarried was nothing. He usually lived in the homestead of other well to do men where he would be performing household chores like splitting firewood, collecting water and herding cattle, brewing alcoholic drinks, etc. but without any payment in return. He would not be given any responsibility within the family or clan. If he were to accidentally enter into some marital relationship, it could be through inheriting a widow of a brother or a close relative. In this case, he was not required to pay bride price since the woman would be staying in the matrimonial home. On the other hand a man who had the means to pay bride price and could acquire many wives and produce many children was socially respected. Such persons were given leadership positions within the clans.

Bride price was considered a stabilizing factor in marriage. Once the bride price was paid the couple now felt that they had a home and became settled. Since they had fulfilled societal expectations they were bound to gain social recognition and respectability. The man could gain social standing since he had quit bachelorhood and could be given responsibilities such as heir-ship. A woman was given her respect as a wife and later as a mother within her circles; otherwise she would be considered as a mere friend of the man. She now felt she had a strong foothold in the home and some even became domineering and assertive. Both the man and the woman would of course wish to maintain this relationship. If she was barren but well-behaved, the bridegrooms family would request for her younger sister to be brought in as co-wife. But in this case no extra bride price would be asked.

### **The economic factor:**

As already stated bride-price was initially a gift of appreciation in a form of cowry shells and traditional hoes. When the money economy set in with the advent of colonial rule, bride-price was transformed into an item of economic value. Among the communities in the then Bukedi District (bigger Tororo) wealth was associated with cattle. In this way bride-price became principally cattle. Other material requirements were secondary.

Why did parents begin demanding bride wealth for their daughters?

This can be answered by looking at the gender roles in the society. At the parents homes the girls were involved in the following tasks on day to day basis.

1. Producing food stuff from the garden
2. Collecting firewood and water
3. General food preparation

4. Taking care of young brothers and sisters
5. Tending to other household chores like sweeping the house and washing clothes etc.

As a girl left home for marriage, it was obvious that the parents would be deprived of all the contributions she was making in the home.

These benefits would definitely be transferred to the home of the bridegroom for the many years of her life there. She was like an item “bought and owned”. Even upon the death of her husband she was supposed to remain in the home and be inherited by a family member. If she chose to go away, her parents had to return the bride-price.

Her other attributes looked to as wealth were the children she would produce. The children belonged to their father and hence expanded the clan. There was also the belief that people resurrected through their children. Her importance in this area cannot be overemphasized.

The determination of the bride price to be paid usually turned out into a hard bargain between the family of the bride and the groom. The team leaders in these exercise were normally the uncles on both the paternal and maternal sides. The uncles of the bride were of necessity also beneficiaries of the bargain and were usually uncompromising.

What was paid for a girl varied from home to home. A rich man or a chief's daughter fetched more bride price than that of an ordinary peasant. The more educated a girl, the more she had to be paid for because people believed that she had acquired more knowledge and was more worthy. A medical doctor was more valued than a primary teacher because her earnings were expected to be higher and besides the parents spent more on her during the course of her education. This trend is to be seen even in the marriages of to-day. The bride-price not only now includes cattle but also clothes, meat, chicken, lamps, sugar, salt, soap, paraffin- in other words essential commodities and sometimes even beer. Often without being asked a family of the bridegroom would shower the brides family with so many other gifts as show of ostentation.

Bride-price has therefore become wealth to most parents who would not let their daughters go until the price they have tagged on her has been paid. Instances can be cited where bride-price is demanded even upon the death of the bride. This matter has caused delayed burials or some times fights at the funerals. One must also state that in the rare cases one finds a parent willing to let the daughter marry without demanding bride-price. This scenario is normally to be found in the homes of educated parents or those subscribing to certain religious beliefs.

#### **Political factor:**

Not much contribution can be made in this area as the societies I am referring to did not have a recognized political set up to legislate on bride-price. We only see bride-price as a traditional norm and practice. Even during the colonial Government the governors let each community determine its own way on this matter.

As I stated earlier on that bride-price was through negotiations, the trend has been towards making this bride-wealth with families making outrageous demands thus making it difficult for people to get wives. Bukedi District then came out with a bye-Law 1954 to standardize the bride-price to what was considered reasonable. The bye-law fixed the bride-price at 5 cows and 22 shillings. The current debate on the Domestic Relations Bill is yet to come into law where I believe this matter will be addressed.

It is apparent that there are many lobbyists especially women Members of Parliament recommending its abolition because it undermines the dignity of women.

#### **Conclusion**

Bride-price in my traditional society was initially a token of appreciation. When the money economy set in economic value was attached to the bride-price. Bride-price turned into bride-wealth and those with girls were looked at as potential rich men. Some people encouraged their young daughters to get married early with these goals in mind.

The higher, the status of the girl either educationally or in social standing, the more bride-price she fetched. This was because it was envisaged that the bride was transferring all her worth to the bridegrooms family. These transactions, however, have tended to keep the girl in perpetual bondage.

Socially bride-price was a means of identifying married couples and a “legal” bond. It also played a great part in stabilizing marriages as the couple felt socially responsible and settled.

Not much politics could be attached to bride-price at that time except in my District the councillors tried to standardize it through passing a bye-law. Recent lobbying against it by human rights activist and parliamentarians have led into the Domestic Relations Bill which is yet to come into law.

Though some people have reasoned that payment of bride price stabilizes the family nonetheless it has its other negative effects:

1. The women could be forced to live in a loveless marriage because the parents cannot afford to refund the bride-price in case she divorced.
2. The family of the woman may view the returning of bride-price as loss since their daughter may be old and no longer marketable.
3. Looking at bride-price as wealth a number of parents may encourage their young daughters to marry at a young age thus cutting short their education or endangering their reproductive life.
4. The young girls being forced into marriages to some polygamous men would stand the risk of acquiring HIV/AIDS.
5. The transaction undermined the dignity of women as it equated them to commodities on sale. Some people, however, argue that this practice is a mere display of culture as you cannot say a woman is worth only 5 cows and 5 goats. Besides there is no ownership as the parents still have a say over the lady and there is a safety valve for divorce. Some men even don't demand back bride price.
6. Poor men were denied opportunity to marry girls of their choices.
7. Sometimes a person was forced to sell off his only asset, land, in order to raise money for buying cattle to be paid for or refunded as bride-price.

Some elders, however, have argued that the bride-price should be maintained as cultural norm and abolishing it would destroy the uniqueness of the culture as imposed from outside. They further argue that many people live happily together to old age in spite of the fact that bride-price was paid to the parents of the wife. They also cite domestic violence in cultures where bride price is non existent but they recommend that bride price could perhaps be relegated to a gift which one does not have to refund.

## **VIOLENCE AND DEHUMANIZATION:IMPLICATIONS FOR MALE PATRIARCHAL POWER IN UGANDA**

**BY: OKELLO RICHARD NIXON**  
**MAKERERE UNIVERSITY**  
**DEPARTMENT OF LITERATURE**  
**P.O Box 7062, KAMPALA**  
**TEL: 256(0) 77604418 E-MAIL: [okellorn@yahoo.com](mailto:okellorn@yahoo.com)**

## **INTRODUCTION**

The institution of bride price is an age old practice that can be seen as the interplay between the events of the past and the present in reflecting the values of the culture of the people. Noting that, it is in the realm of culture that bride price entrenched its powers. Therefore the practice cannot be seen as a clamour for wealth but a realization of cultural, beauty and values attached to marriage.

However, I must acknowledge that it would be of great material, spiritual and human dignity benefit if the practice underwent a cultural renaissance. One that took women sincerely and humanely considered their views and observed their fundamental human rights as people whose feelings must be respected and heard. This is because the cause of domestic violence where women and children have suffered dehumanization is as a result (of) where / when humans give away their humanity they behave like beasts signifying a world (family) of disorder, violence and anarchy.

The practice of looking at girls not as children but as property or commercial goods that can be sold once a buyer appears or to the highest bidder is the point of contention. It is through this high handed narrow insight that the gorgeous, perfect bride price culture has permanently been destroyed. So to blame the institution without necessarily filling the pit falls that is drowning the institution, is a creation of indecorous dilemma.

We should prepare ground to fight the myth of patriarchy because with it, combined with male domination over the production of wealth and civic authority; the internal plausibility and ideological integrity of the institution will continue to be undermined and abused. The end result is the dehumanization of women and children. In the context pointed above, I view the deeds of men under the configuration of patriarchy as crucial planks in the killing system of the institution of bride-price livelihood. I therefore call for the rejection of the hypocritical and ignorant application of phallocentrism and patriarchal values in our cultural practices.

The institutionalization and subsequent valorisation of wealth for or bride - price at the demise of human rights of the girl child and women folks, conversely introduced savagery, violence, primitivity and dehumanization. This agonizing phenomenon has caused most people to immerse themselves in the imported culture of either evading or avoiding the practice of bride - price thereby denying their origins.

We should note that imperialists who needed moral justification for their pillage, rape and dehumanization of African cultural patterns and ways of life deliberately distorted the image of Africa. It was they who said that Africa was a savage and backward land with little history and no golden age - Henrik Clarke (1968:11).

Customarily, bride-price practice increases the security of children and women in terms of protection, wealth inheritance and sharing of property. Bride - price signifies love, respect and values worthy of social meaning. It is an act of appreciation given to the girl's parents for taking care of the girl since childhood to adult hood.

## **FAMILY CONDITION AND STRUGGLE FOR CHILD WELFARE**

When we configure the family as the fountain of kinship system and the basic unit in the process of socializing and upbringing of children, we feel the over aching need to provide a literary response to its conditions and struggle to child rearing. Besides, many studies take the issues of child welfare in a family setting for granted and considered family structure and marriage institutions in terms of wealth distribution and inheritance.

Consequently, children's welfare continues being discussed under women's umbrella or women and children. Such a practice is erroneous and needs to be interrogated so that children's actual needs are made clear. Thus, the overall task of this paper is to de-construct the various constructions of family conditions and the contributions of each member of each family in providing for the child welfare; the position of the child in all these struggles in a bride price based marriage shall be placed central/given central analysis.

Failure to meet the material and nutritional demands of a child affects the psychosocial well being of the child and of the whole family. The nutritional well-being of a person depends very much upon the security, economic and social condition of the family and the community relationships and the existence of a sane and predictable family resource. To build a reputable and a firm resource based family, the family heads struggle and encourages each member to be productive and active members of the family. This way, most families find themselves engaged in petty trade, lucrative jobs and to some extent, the under privileged engage in illicit trade to which they conflict with the set procedures. The struggle is even made meaningful if the family is properly constituted.

We place marriage and the practice of bride price at the centre of this project because of its cultural setting and the values attached to it. The family occupies a significant space in terms of struggle and options. It is here in the traditional family set up rather than in the hybrid family that we may look for the meaning of the changes that have taken place in the bride price institution.

Family livelihood and survival of its members is fundamental to the society's well being. In an attempt to meet basic survival needs and in providing a pathway to a healthy condition for the siblings, most families tend to engage in income generation ventures. Displaced youths beyond and within the school going age always seek employment opportunities but whether their struggles to survive play an active role in supporting their families is the contestation of this research project.

The position we take in this paper is that the increased incidence of juvenile crimes, uncontrollable influx of street kids, unabated rate of domestic violence is part and parcel of the already ongoing process of the changing family, household and to some extent poverty conditions of most families. This could also have an accusing finger to the bride price institution.

We believe that the family and household condition is quite important in the socio- economic lives of individual men and women and society as a whole. This is because of the functions the institution is supposed to carry out. Firstly, the family institution provides the best opportunity for the socially controlled expression of traits.

Secondly, the family is said to provide the necessary mental stability for reproduction and upbringing of children. We note here with interest that the upbringing of children requires considerable time and effort as human maturation takes longer than any other living species. To this end therefore, to be brought up effectively children require the kind of help more than adults need. Psychologist and sociologists believe that, child upbringing requires a stable family condition. Apart from the above functions, the family also plays or serves some economic functions. The main economic function it plays, is to provide food and shelter.

Scholars argue that in many pre-industrial societies, families produced most of what they consumed. This is also true to the rural Ugandan families who are predominantly bride price based families.

Further still, poverty vulnerability has affected the material basis of most families in Uganda. This has led to many children running away from their homes seeking security elsewhere; while others have resorted to child prostitution, in the wake to struggle to feed children, some female parents too have resorted to prostitution putting the question of family identity in disrepute. It is therefore not surprising that Ashcroft, Griffiths and Tiffin (1989:9) refer to the question of identity as a special post-colonial crisis. This crisis comes about when answers to questions like "who am I; who are we; where do we belong are not easy to come by, making an individual who comes from such configuration a nonentity of sorts.

## **VIOLENCE: CAUSES AND IMPLICATIONS**



Domestic violence in terms of wife beating is a perennial issue in most families. There are cases of people (men) pouring scalding water or acid on their spouses in retaliation for infidelity. There are incidents of extreme violence meted out to women and children in the most brutal manner. The cause of this heinous act can be acclaimed to inferiority complexes. In some cases you a woman may be better educated than the man, earning more money or even better endowed with talents yet the man is the husband. Some men feel insecure and begin to look at their wives as competitors not as a partner in marriage.

Violence meted on women in the name of enforcing male authority can only dehumanize them. Leave alone keeping them at arm's length in making positive decisions for the well being of the family. If it continues unabated, shame and fear arising out of the family squabble will split up human character and make her innermost self fail and fall to pieces.

The issue of women's emancipation and gender equality is not new in Uganda. Its damning factor is that its proponents have not demystified its philosophies and ideologies. Most people think that it is an avenue through which women can rebel against their husbands to the extent of sending them to the kitchen, baby sitting or simply sharing domestic chores. In some cases, the practice has exhibited some form of disrespect, undermining, abuse and nagging. It appears that, men in a bid to exploit their masculinities demand respect without question and turn to be brutal and violent.

A lecturer in the philosophy department at Makerere University in his paper on the negative aspects of gender perspective in Ssewakiryanga (2003:45) writes;

“Many women now want to portray themselves as fighters; it's creating a kind of conflict. The consequences of that are that if one opens the New Vision, there must be a woman who has beaten a man, there must be a woman who has poured water on her husband, to me this is the way women express their equality.”

## **THE MARRIAGE INSTITUTION AND HUMAN RIGHTS:**

The architect of violence in the marriage institution who have painted the institution and set it prone to ridicule should be declared insensible to ethics; they represent not only the absence of values, but also the negation of values. They are, let us admit, the enemy of values and in this case, absolute evil. They are the corrosive element, destroying all the social values and affluence attached to the bride price institution.

To mention the least, they are the deforming element, disfiguring all that has to do with beauty or morality; they are the depositories of maleficent powers, the unconscious and irretrievable instrument of blind forces. For this reason therefore I want to state here irrevocably that patriarchy that forces men to act like beasts should not be allowed to prostitute our minds to blame the institution of bride price as the ultimate cause of domestic violence and human right abuse in families.

The belief, which puts man to be superior or to have a superior sex, affects the organization of social institutions, such that an andro centric system, which automatically rewards and glorifies the "superior" gender with more resources, becomes self-perpetuating. My interest in advancing the above proposition is not the resources placed on the superior gender but the human rights violation the girl child is exposed to. The superiority of the male, which is predicted upon the subordination of the female, is the practice that puts the bride-price institution in disrepute and ridicule.

The value accredited to bride-wealth is so great that a girl /child should not be abused and under looked. This places the question of human rights violation in the name of bride price at a risk and warrants concerns. Another consequence of repression is the brutalization of women and children (girls). In most societies, there is wilful brutalization of young girls occurring among us that is appalling. Many girls are forced into marriages simply because their brothers must either go to school or / lack bride wealth for marriage. The situation is made fragile when the girl is under aged. Human life especially that of the girl is taken lightly. All manner of inhuman treatment is meted out for minor interests of wealth. Women or mothers who stand out to oppose the tradition are terrorized daily by wanton display of masculine and sexism power and its instrument of violence. Some family conditions are guaranteed to traumatize. The only consensus women can mobilize is passive

conformity from fear and resignation. As we continue to stagnate to the practice (patriarchy) the marriage institution gets worse.

### **THE PATRIARCHAL SOCIAL STRUCTURE:**

Is the bride price practice worth the glamour it enjoys today in Uganda and world over? Should it be abolished? If it were abolished, what would be the consequence to the cultural settings of the people who practice it?

The abolition of bride price, which sets out to change the order of the world, the order of cultural values and beliefs, is obviously, a programme that will be seen as a complete disorder. We all know that the institution for sometime has been violently exploited and abused by violent men and women who came together by accident. Not by mutual choice, love and understanding.

Patriarchy, a system ruled by men whose authority is reinforced through social, economic, political and cultural institutions; is a fulcrum on which male assumptions of authority over women and families matters revolves. The practice seems to affect women and children's access to peace and freedom both at home and in work places. In a marriage institution, the girl child is not counted among other children. The Lango has a proverb that "Nyako Pe, Ochome tong" meaning is "A girl is not given a spear". This proverb points and indicates that a girl is a visitor at home, she cannot be given a spear to defend the home because she will be married away. Hence not counted among children at home.

The patriarchal culture in Ugandan societies tends to perpetuate male domination and justify female subjugation. The practice has seen women as under dogs in portraying their identity and opinion. In most societies, women's views are suppressed and considered irrelevant. They eulogize men in the manner of courage, hard-working and physical strength. It therefore means that a man must work hard to acquire enough wealth to marry in an expensive way. Women too feel proud if she fetches many cattle or wealth in form of bride price. There is a general feeling that a woman who is not married without a huge amount of bride wealth is a prostitute or not worth talking about in society. In a way, the practice of bride price is seen as a prestige, glamour and social acclaim, worth admiration.

### **Conclusion**

It is sad to note that in Uganda today, separation and divorce are increasingly overtaking death as a major means of marital dissolution. But should we close our eyes and blindly point an accusing finger to the institution of bride price as the ultimate cause of this unhealthy phenomenon; shall we not stand a risk of re-enforcing the stereotypes of black persons that we read in Eurasian literatures that painted African practices as derogatory, demeaning, degrading and dehumanizing.

In Uganda and Africa as a whole the patriarchal domination reigns high in most societies. As such, women and children are oppressed as a social category. But to a large extent; the dependence of women on men for material necessities of life and protection is the basis of sexual inequality that needs redress. Instead of blaming the bride-price institution, there should be something else that liberates a woman from the kitchen, from the farm and puts her on an equal footing with man. This could be in terms of economic empowerment and social recognition that portrays a woman that without bride wealth can also contribute to the family wealth through other means.

A focus on poverty and its emasculating effects is common among Ugandan families. In a study carried out by Richard Ssewakiryanga, (2003: 45) during a focus group discussion, one of the male respondents said that a successful relationship requires financial backing. But went ahead to allay fears that:

"If a woman is richer than you, she can hold you at ransom, by cutting off Aid, she will be an IMF, a World Bank, and you will not be boss. What we need is a men's conference. If the women form a market then, we should have an organization of men,(451)"

The view expressed by this respondent is common among Ugandan men. There are those who deliberately suppress their wives and deny them access to economic empowerment simply because they want to remain feudal land lords at home to the extent that they can fart all over their women. The scenario is made

complicated when women try to break the yoke and venture out into some form of economic activities without the consent of their husbands. The result is violence; with the aim of pruning her feminine extinct.

The bride price institution should appreciate the rights of women to access freedom of expression; independent decision-making and most importantly, control of land and household riches. It should also be able to evoke the gender power relationships from the human rights perspective as an umbrella as the basis of social relationship is cross-cutting and influences other social relations such as class, sex, ethnicity and the policy orientation of the family and the state.

There should also be a legal framework that analyses women and children's, especially girl children's rights to access land and property in a home without necessarily appending inheritance to the bondage of marriage bride price. The current formal legal system in Uganda does not explicitly ensure women's rights to land without contradicting with the customary laws. It is also apparent that the formal law is also tied to culture. Fundamental regulations found in land and domestic relations seem to be sanctioned by culture. The empirical evidence shows that the legal systems that govern domestic relations is complex and ambivalent in nature and context.

By joining the debate for the abolition of the bride-price institution, shall we not be wearing blinkers on our eyes that stop us from seeing the beauty and values that the institution is endowed with? Shall we not be looking at the culture through a Euro-centric eye? I think by calling for the abolition of bride price or whatever recommendation we make, it is a way of making the marriage institution a casual and meaningless institution.

You do not turn any society, however primitive it may be, upside down with such a program of changing the practice that has kept it vibrant all these millennia. This is not to prophesy doom or muddle, but the native to mention the least who decided to practice and value the institution and to become its moving force, is ready for violence at all costs. From the on set it is clear that this narrow world is set to brand everything African practices out-dated, retrogressive and anti-modernism and therefore stretched with prohibitions.

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## A PAPER PRESENTED BY MARY OKIOMA

Kenyans can marry or get married and divorce under any one of five legally recognized systems. There is the statutory marriage and divorce, Hindu marriage and divorce, Islamic marriage and divorce, presumption of marriage under common law as well as African customary marriage and divorce. A Kenyan man may be married under statutory law but still enter into a marriage under traditional African customary law. The numerous legal systems of marriage in Kenya coupled with the lack of a central marriage registry make it easy for men who are already married under a monogamous system to enter into polygamous unions. This is done by payment of bride price.

An African customary marriage is based on an agreement between the families of the bride and groom involved as opposed to the two individuals getting married. It is sealed by the payment of bride price by the family of the groom usually in the form of cattle or other property to the bride's family or guardian. This validates the marriage and establishes control by the bridegroom and his family over the bride.

Like most cultural practices in Africa the institution of bride price was desirable and put in place for community welfare. It was aimed at building a stable long term relationship between the families of the bride and groom. However, due to modern developments on the medical scene and the unique features of bride price such as polygamy, domestic violence, wife inheritance, property rights, and patriarchy, the institution of bride price may have outlived its usefulness. Today, bride price is used to further selfish individual needs of men and for men to control women to their social, emotional and economic detriment. It is responsible for the majority of women's diminished power in economic, political and sexual negotiations and contributes heavily to the spread of the Human Immunodeficiency Virus (HIV) which eventually leads to development of Acquired Immune Deficiency Syndrome (AIDS). According to statistics released by the Joint United Nations Program on HIV/AIDS (UNAIDS) and World Health Program (WHO), more than half the number of People Living With HIV /AIDS (PLWHAS) worldwide are women.<sup>1</sup>

When the first case of HIV was diagnosed in 1983, African governments considered HIV and AIDS a foreign problem. Today, HIV has spread around the world, causing one of the most severe global epidemics of modern times.<sup>2</sup> By July 2002, according to the Kenya Task Force on Legal Issues, over 36.1 million people worldwide were HIV positive and 21.8 million people had succumbed to AIDS. The pandemic is responsible for an estimated 1.1 million orphans in Kenya alone and on average 500 – 700 Kenyans die of AIDS related complications on a daily basis.<sup>3</sup> While significant gains have been made in the treatment of HIV/AIDS in developed countries, 95% of infected people live in the developing world.<sup>4</sup>

Since August 1984 when the first case of HIV – AIDS was diagnosed in Kenya, over 1.5 million Kenyans have died of AIDS and about 300,000 are infected with the virus each year.<sup>5</sup> The AIDS pandemic is all encompassing and so complicated that it cannot be contained without looking into all aspects of human life.

One aspect of life that must not be ignored is the culture of polygamy in the traditional African customary marriage. It is generally accepted in Africa that customary marriages are potentially polygamous. Although in recent years, harsh economic realities have brought about a gradual shift towards monogamy, polygamy is still practiced across the board and men who marry customarily are generally free to have as many other wives as their resources (capability of paying bride price) can allow. In the words of Eugene Cotran commenting on polygamy among the Kikuyu of Kenya,

*'A man may enter into any number of marriages, provided that the subsequent marriage is otherwise valid...the consent of the first or senior wife is not necessary before the husband takes a subsequent wife.'*

This position is not only true for the Kikuyu. It applies to most Kenyan communities and it of course clears the way for men married customarily to have extra – marital affairs as well as additional marriages. It is a practice that carries serious health implications both for the men involved as well as their women and children because the number of sexual partners a man has is directly proportional to the degree of risk of contracting STDs and AIDS by himself and his wife or wives. Children in such marriages run the risk of being orphaned and left to fend for themselves from tender ages.

Although a man's conduct may expose his wife (or wives) to the risk of infection, the complaint of a husband's adultery is not a legitimate one under African customary law. A woman is bought at a price and enters into a potentially polygamous union. Anything she may have to say which may put restrictions on the polygamous nature of the union is of no consequence and unlikely to be entertained either by her husband or his family.

Traditionally, payment of bride price relegates the status of a woman to that of a minor. A woman is under the authority of her parents until she gets married. After payment of bride price, this responsibility is transferred to her husband or her husband's relatives in his absence and a married woman belongs to her husband's clan. She is not a partner with her husband but a chattel with specific duties. Under customary law, a woman does not have the capacity to make decisions without the consent of her husband, father or other male kin.<sup>7</sup>

She becomes part of the property of her new home and is not even involved in making decisions about issues that concern her or her children even regarding such important matters as burial or use and sale of family property. Her role in the new family is limited to taking care of her husband, working on the farm and bearing children for her husband's family. According to a research conducted by UNAIDS in March 2003, married women are traditionally regarded as *'minors who ought to be chastised as children'*.<sup>8</sup>

Wife beating is therefore not regarded as a crime but rather a disciplinary measure. For this reason, a complaint from an unhappy wife would invite violence from her husband which is widely tolerated in Kenya. It is not treated even by courts of law with the same seriousness as other types of assault and women who find themselves in abusive relationships often have nowhere to turn. According to customary norms, no wrong has been done and according to the law it is a domestic matter outside their jurisdiction. The attitude of Kenyan police officers as well as courts does not deter men from domestic violence since their stand is generally not to interfere in domestic matters particularly where a man is 'just disciplining or chastising his wife'. Domestic violence has thus helped to keep the cornerstones of the institution of bride price in place as a woman is a man's property and the man is free to do as he deems fit with her. Women are not able to demand faithfulness or safe sex and condom use in traditional African marriages and the concept of marital rape is unknown to African customary law. African women are therefore exposed to the risk of infection with Sexually Transmitted Diseases (STD's) and AIDS.

Besides the health risks involved, polygamous marriages are an abuse of women's right to equality with men in marriage. Although polygamy and multiple sexual partners of a spouse may not lead to infection, it spells serious emotional and financial implications for the women and children in such relationships and is not in their best interests. It is a common trend for children to suffer deprivation and neglect due to the division of resources that comes with polygamous marriages. Many of them have to go through life deprived of basic necessities.

As opposed to the western marriage, the African marriage is a transaction between two families. In recent years, there has been a move towards greater flexibility and freedom among women to choose their own husbands, but family approval and involvement in negotiating marriages is still highly valued<sup>9</sup>. Sometimes, the marriage negotiations involve wealthy old men and poorer families who marry off under-age girls against their best interests, without seeking their consent and in contravention of their rights as provided by the Convention on the Rights of the Child. Because of the bride price that wealthy suitors can pay to poor families, young girls are married off to older men who have the resources to pay their bride price and who may already be infected. This practice is discriminatory against the girl child since there is no similar or corresponding practice against boys. Indeed it is not unusual to marry off a girl and use some of the income to educate and provide for her brother(s) needs.

Due to their tender age, young girls who find themselves in such relationships find it difficult to negotiate safe sex or faithfulness. This practice of early marriages for girls not only interferes with the girl's right to education but also paves the way for her social, economic and political marginalisation and contributes to the spread of AIDS. It is reported that in sub-Saharan Africa, prevalence of AIDS among teenage girls in some countries is five times that of teenage boys. Indeed in some African countries, about 6-12% as many young women aged 15-24 are living with AIDS compared to 3-6 % of young men. Most of these infections occur as a result of heterosexual intercourse.<sup>10</sup>

Another aspect of bride price and its contribution to the spread of AIDS is that in the African customary marriage when bride price is paid, a woman loses the right to own property and hence all property that she may have acquired before marriage or that she will acquire thereafter belongs to her husband. In the words of a senior chief in Ngong, Kajiado district,

*“ a woman and the cows are a man’s property ”*<sup>11</sup>

This is the concept of marriage in African society and the reason why payment of bride price exacerbates property rights violations against African women. The issue of property ownership contributes to the spread of STD’s and AIDS. Being a largely patrilineal society,

*‘...traditionally, a divorced woman would automatically lose custody of her children. In addition to that, she loses all property and may only keep her pots and personal clothing’*<sup>12</sup>.

Since women who contemplate separation or divorce have to contend with being sent away empty handed, this makes them stay in abusive relationships or those that carry the threat of infection and end up being infected with STDs and AIDS.

Although a girl belongs to her parents until marriage and thereafter to her husband’s family, when it comes to property ownership she is neither a full member of her natal nor her marital clan. She therefore does not inherit from her parents because her husband’s family is supposed to provide for her. In the event of separation or divorce, a woman is sent back home empty handed for her family to provide for her and refund the bride price, which does not usually happen. Indeed, the whole issue of returning of the bride price discourages many women from leaving abusive marriages particularly when they know that their families will not be able to return the bride-price.

Bride price not only impedes women from getting a share of family property upon the husband’s death or divorce, it also means that the woman and any property she acquires or children she bears belong to her husband and his family. Indeed in most Kenyan communities, unless the dowry is returned to the husband, he can even take children the woman has with other men.<sup>13</sup>

By the time a man is dying of AIDS, his wife or wives are also usually infected with the deadly virus. It is therefore a double tragedy for women with AIDS in Kenya, when their homes, lands and other properties are taken by the relatives of their husbands. They lose assets they could use for medical care and also find themselves destitute, chased out of their matrimonial homes and unwelcome in their natal homes. So far, the law does not provide for recognition of spouse rights in division of property during times of death or separation of spouses. A 1985 bill which would have created among other things a uniform law recognizing equal spouse rights in division of property was shelved when members of parliament said it interfered with men’s ability to chastise their wives!<sup>14</sup> Discrimination against women in property rights issues constitutes an abuse of human rights of women as provided for by the Convention on Elimination of All Forms of Discrimination Against Women and exacerbates the already unimaginable havoc caused by HIV/AIDS .

Although most cultural practices in Africa had the welfare of the community at heart and were generally positive in providing social security for the vulnerable these have been abused and misdirected for the benefit of selfish individual needs. One such cultural practice is wife inheritance. Upon death of her husband, a woman married the customary way by payment of bride price cannot stay in the matrimonial home or on the land unless cleansed and inherited. The argument is that

*“Women have to be inherited to keep any property after their husbands die. They have access to property because of their husband and lose that right when the husband dies.”*<sup>15</sup>

Their access to property is restricted to the lifetime of their husbands. After his death they cannot marry outside the family because the husband’s family had bought them with a price – bride price. They are therefore the property of their clans and must be inherited. Wife inheritance is an easy way to access the property of the deceased since women who resist inheritance are sent out of the household. The tragedy is that after being inherited, ownership of all the family property passes on to the inheritor who is the new head of the household. According to one widow interviewed by the Human Rights Watch in Kisumu, ‘inheritors aren’t supposed to give, they’re only supposed to take’<sup>16</sup>

The practice of wife cleansing goes hand in hand with wife inheritance. Wife cleansing usually involves the widow having sex with a social outcast, although in recent years the trend has been to seek the services of a professional 'wife cleanser.' Reports indicate that one in three widows in Western Kenya is forced to undergo the cleansing ritual.<sup>17</sup> The sex link in burial rites of some Kenyan communities and the practice of wife inheritance have contributed heavily to the spread of AIDS. Condoms are not used in cleansing rituals partly because the cleansing is not considered complete unless it is skin to skin and partly because the circumstances surrounding the entire ceremony make it difficult for a woman to demand the use of a condom. Self styled professionals in the area of 'cleansing widows' have been known to cleanse up to a hundred women in the course of their 'practice', one after another without taking any safety precautions for their sake or for the sake of the women they 'cleanse' or for the sake of their own wives. This is not only a sure way to spread the AIDS virus, it is a human rights tragedy. The women's right to the highest attainable standard of physical and mental health as provided for by Article 25.1 of the Universal Declaration on Human Rights is abused. All this happens because of bride price and in the final analysis, after payment of bride price a woman has no control over her life or health. She lives at the whims of her husband and his family.

Women are financially and socially challenged when it comes to divorce for many reasons. Perhaps the most important is the fact that the woman's family is required to return dowry after divorce and may not be in a position to do so. There is also the fact that as with payment of bride price, its return on dissolution of marriage requires the consent of both families and involves protracted procedures and ceremonies to be conducted by the families. This explains the reason why divorce rates remain low even though many women are barely getting by in abusive and risky relationships. This and the failure to ensure equal property rights upon separation or divorce discourage women from leaving abusive marriages.

Wife inheritance may originally have been well meaning and protective but today it is predatory, exploitative and potentially fatal. It has resulted in gross human rights abuses against women and children and brought about serious health concerns in this era of HIV and AIDS. The time has come to strike a balance between individual rights to cultural identity and public health concerns. We need to study and understand the institution of bride price, the link to culture and traditional practices and its implications for women and children. It is only with a complete understanding that we can move to legislate against the entire practice or those aspects of it that constitute human rights abuses and lead to such social evils as the spread of HIV/AIDS.

### **Recommendations**

The criminal penalties specified in our laws for inter-meddling with estates of deceased persons are insufficient and do not deter the plunder that goes on when a husband and father dies. The law should make it criminal to deal with property of a deceased person before taking out letters of administration to deter people who move to grab property upon death of a husband. Harsh prison sentences and heavy fines would be useful towards this end.

Although our constitution outlaws discrimination on the basis of sex, this is widely practiced particularly when it comes to personal and customary law. The new constitution should make specific provision for legal protection of women's property rights. The law should specifically provide for equal spouse rights in division of matrimonial property during separation or divorce. This will ensure that women are better placed to take care of themselves and their children when such situations arise. Together with this, there is need to promulgate legislative policy instruments that regulate and protect the Human rights of women and children in social relations such as marriage, to protect women from domestic violence in all its forms.

HIV/AIDS thrives alongside poverty. The government should pursue policies that promote the economic status of women in order to give them power over their lives and enable them to resist situations that put them at risk of HIV infection.

Succession laws should be made easier and more accessible to poor and illiterate women, and the process of obtaining letters of administration should be made cheaper and faster to assist widows and orphans who are ignorant, poor and more vulnerable in matters of succession and inheritance.

The general public should be adequately informed about HIV/AIDS and to this end prevention, education, information and communication campaigns should be carried out on a countrywide basis so that Kenyans especially those in the rural areas can have the necessary information to shun cultures and practices that spread HIV/ AIDS. This is one area where NGOs and Community Based Organizations (CBOs) can play a significant role because of the direct contact that they have with vulnerable populations and their unique ability to lobby and influence public policy.

Although the intentions may have been noble, payment of bride price in Kenya today presents a myriad of challenges to women exposing them and their children to human rights abuses and the risk of infection to HIV/AIDS. The time has come to take a stand on whether bride price has outlived its usefulness or not.

#### **Footnotes**

- 1) AIDS epidemic update, Joint United Nations Program on HIV/AIDS (UNAIDS), and World Health Program (WHO) December 2002 at pp 18
- 2) The business response to HIV/AIDS: Impact and lessons learnt. Joint United Nations Program on HIV/AIDS (UNAIDS) 2000 pp 7
- 3) Republic of Kenya Report of the Task Force on Legal Issues Relating to HIV and AIDS. Office of the Attorney General and National Aids Control Council July 2002 at pp 1
- 4) The business response to HIV/AIDS: Impact and lessons learnt. Joint United Nations Program on HIV/AIDS (UNAIDS) 2000 pp 66
- 5) Republic of Kenya Report of the Task Force on Legal Issues Relating to HIV and AIDS Office of the Attorney General and National Aids Control Council July 2002 at pp 2
- 6) Restatement of African Customary Law; Kenya. Volume 2 Eugene Cotran at pp 10
- 7) A situation analysis, UNICEF – Harare, 1994 at pp 52
- 8) Double standards: Women’s property rights violations in Kenya Human Rights Watch at pp 9
- 9) Ibid at pp 27
- 10) AIDS epidemic update, Joint United Nations Program on HIV/AIDS (UNAIDS), and World Health Program (WHO) December 2002 at pp 18
- 11) Wilson Tulito Molill , Senior Chief Ngong. October 25 2002 Interview by the Human Rights Watch in Double standards: Women’s property rights violations in Kenya at pp 33
- 12) A situation analysis, UNICEF – Harare, 1994 at pp 52
- 13) Double standards: Women’s property rights violations in Kenya HRW pp 27
- 14) Janet Kabeberi – Macharia. Women, Laws, Customs and practices in East Africa: Laying the foundation (Nairobi: Women and Law in East Africa) pp 83-84
- 15) Wambui Kanyi, Collaborative Center for Gender and Development. October 27 2002 Interview by the Human Rights Watch in Double standards: Women’s property rights violations in Kenya at pp 12
- 16) Double standards: Women’s property rights violations in Kenya HRW pp 21
- 17) Ibid at pp 13



**ANCIENT AND TODAY'S LIFE IN PADHOLA (PADHOLA CULTURE)**  
**BY OLOWO SILVERS KAPURIE (DIP. ED. KYAMBOGO UNIVERSITY) (AEO Rtd.)**  
**NOVEMBER, 2003**

**PREFACE**

There have been talks about the culture and tradition of the Jopadhola, their origin, socio-economic activities, worship, wealth, wars, natural disaster and other pestilences.

Many schools of thought of elderly person, leaders, opinion leaders, traditional medicine men and women have all been consulted as to how the Jopadhola came here. There have been doubted names like "Budama" Badama, Ludama, River life, Wadama and Padholaland.

The history states that during the tribal wars between the Jopadhola (The Luo (Nilotes)) and the Bantu speaking neighbouring tribes, war slogans were chanted by the Jopadhola warning their enemies saying; "widoma" "ngoyo", "wibole woko" all these war chants meant: "woe! woe!, woe" to the enemy who picked the first slogan: "WIDOMA" and said, "we are fighting the people called "Wadama or Badama, and hence their country should be called "Budama" and the language Ludama" respectively. However, the original settlers in Budama land are the Jopadhola. Such ideas are common in the world history: e.g. the people who live in Holland are called the Dutch, The Red Indians of North America defending their land against the colonial explorers shouted: "Canada! Canada!" meaning "our land, why do you come here?" Cook exploring Australia asked a native aborigine, "what is that animal called?" The native answered, "Kangaroo" meaning I don't know. Cook drew the picture of and called the animal - "Kangaroo". In the like manner this was how the Jopadhola got their second name: Badama and it has remained to date.

The Jopadhola oral tradition puts it that Adhola, the ancestor of the Jopadhola found the present day Padholand conducive to stay in with his family; the neighbouring communities were very, very friendly. However, tribal wars broke out between them because each tribe wanted independence, more land and hence a very sound economic stand. Very many Jopadhola were killed in these tribal battle fronts; but the Jopadhola warriors took home their war victims, thus, young captives, abductees and any prisoners of war, both males and females and treated them as their family children, hence increasing their population, economic base and security personnel. That is why the Jopadhola have to date embraced foreign people with ease.

I am so grateful to my late father Simon Peter Odoi and my late mother Rebecca Akech who assisted me right from my childhood to learn these stories through oral tradition, all elders departed and alive who helped me to write down this book and get more people informed.

Lastly I am indebted to my wife Gertrude Agos Olowo Akello, who tirelessly encouraged me to work on this material. I thank all those who assisted me in one way or the other; and I long for more guidance from the people who will read this text.

**OLOWO SILVERS KAPURIE**

**CHAPTER ONE**

**ORAL TRADITION LITERATURE**

The culture and traditions of the Jopadhola people have been passed from generation to generation since the Adhola community settled in Padholand from the Sudan to a remote place called Katandi, 32km west of Tororo town between 1600 -1700 A.D.

The legend reckons that Adhola, the Ancestral father of the Jopadhola, travelled from the Sudan southwards looking for pasture land after a family quarrel. He and his brother Owiny, moved with their families for a long time until at last reached the present day Tororo District via Pallisa, Budaka and Bunyole.

When they reached the present day Kirewa sub-county, and they were crossing a flooded swamp at Katandi, the water washed away Nyajuria's (Mrs. Adhola's) skirt (chip). Mrs. Adhola lamented and named this swamp, Nyachip (skirt) in memory of her beautiful skin skirt it carried away.

Nyajuria who was expectant sat and sighed under a big Mvule tree where they rested and said that her foetus was as heavy as heavens, and that I when born would grow as big and tall as heaven. She delivered her son and named him "Nyapolo (Heavens)".

Owiny and his family who were still on the move, asked his brother Adhola, to follow them after Nyajuria had weaned her baby. But Adhola never followed his brother after finding this place good for his family to settle in..

That was the separation of the two brothers; Owiny settled in Kisumu in Kenya and Adhola remained in Tororo in Eastern Uganda. Adhola had many sons from his two wives; Nyajuria and Oryang. Some of these children by alphabet not seniority are: Agoya, Amor, Bendo, Biranga, Ddee, Jiep, Kathowa, Kochi, Koi, Koyo, Lakwar, Loli, Morwa, Nami, Nyakeno, Nyapolo, Nyirenja, Ojilai, Oruwa, Ragang and Ramogi.

These sons produced and constituted the present day Padhola clans. Since then, the Adhola community has lived as agro-pastoralists, medicine people, hunters, musicians and security operatives in defence of their lives and property.

Today the Jopadhola live in Tororo District mainly in North and South Budama; and also in different parts of Uganda and beyond. They have kept the good practices of their culture and discarded the bad ones. e.g. women should not eat certain food; but now they eat according to their choice.

Let us therefore look at some important issues in the ancient and the present day Padhola.

## **CHAPTER TWO**

### **THE ADHOLA TRADITIONAL WORSHIP (A.T.W).**

In all the legendary, traditional and cultural beliefs, the Jopadhola community believed in and adored one God, the Creator of all things in the universe.

Knowing and believing in one God is an indication that the Jopadhola had religion and were religiously sensitive. Jopadhola believed in the existence of the most Divine person that controlled the life and death of everything on the earth.

#### **I. THE OCCASIONS OF WORSHIP.**

These were to: Thank, praise and ask God the Creator for more achievements in their welfare.

2. Repent the sins and wrong doings committed in the family, clan and tribes; and

3. Remember and praise the departed souls - the ancestors for the good they did and left for the family, clan or tribe and to ask the Creator to rest their souls in everlasting peace in heaven.

#### **II PLACES OF WORSHIP**

Shrines - where the clans and the entire community adored their God e.g. Tewo in Paya sub-county.

Shrines were also built in homes for family and ancestors for worship by individual homes.

Physical objects:- caves, forests, vaults, valleys, hillsides, mountains, river banks were also used as worshipping places.

#### **III POSITIONS OF WORSHIP**

Jopadhola knew that God the Creator had put human beings on earth to adore him, therefore at prayer time, they went to raised places like hilltops, mountain or ant hills to recite their individual or common prayers. They believed that the Creator lived in all places, but his main palace was heaven where he stayed creating all the things in the universe, but he had some other small gods and the ancestors taking care of his people on earth. These gods and the ancestors acted as angels and saints respectively.

#### **IV HOME/FAMILY WORSHIP**

Three Divine persons were revered and adored.

The home god: Jopadhola believed that God the creator had too much to do, hence had put the home god to care for the family members and their property.

God of the Gate (Sanctuary god) - who received, checked and blessed all the family members, their wealth and visitors coming in and out of the home. This was the god of security.

The Jungle god (god of the gardens and pastures) - received the items two (2) above, cared for and returned them to the home through the god of the gate. These divinities were also worshipped by the community, hence three shrines were built accordingly.

#### **V SACRED OBJECTS IN ADHOLA WORSHIP**

1. These were tools like spears, knives, sticks, arrows and shields. Items such as stools, small huts, horns, ivory, pots and any other objects that were declared sacred by the chief worshipper who alone or his assistants took custody of until time came for their display in ceremonial functions.

#### **VI HIGHLY CEREMONIAL WORSHIP**

1. God the Creator Worship: Here burnt offerings were made consisting of only white live stock. These were burnt at the shrine altars. The chief celebrant wore a white animal skin (Siriet) and carried the sacred objects. Roasted meat and beer were shared among the congregation; but the women were not allowed to appear at that site, only men and boys.

This was the adoration of one God the Creator thanking him for the success, achievements and peace he had bestowed upon the family, the clan and or the entire community at large. This was followed by a big banquet at the Chief celebrant's home in which every person was free to join including women and girls.

**2. Accidents: Murder, accidental deaths and wars.**

Here the red or brown livestock were offered in order to request God the Creator to rescue his people from such troubles in the near future. This was a prayer for mercy and repentance. It was also a reconciliatory ceremony between the families, clans and tribes that had experienced such calamities asking God the Creator for forgiveness.

**3. Natural Disaster:**

These could be epidemics, storm, earth quakes, landslides, famines and other pestilences. Here only the black animals were offered, more so the sheep or goat to ask God the Creator to remove such problems from his people and create peace and security instead. This sheep was rotated to all parts of the country accompanied by seeds/ seedlings of all the crops found within the community, so that death (yamo) might never return to attack the Creator's people in that manner. This was a scapegoat or sheep (rombo yamo).

**4. The Ancestral Worship:**

This often was in form of thanks giving to the departed souls of the ancestors of the family, clan or tribe. This memorial prayer was usually conducted when;

a) Naming the children by giving them the ancestral names.

Twin birth ceremonies: twins, triplets, quadruplets were highly celebrated with big feasts preceded by thanks giving prayers to God the Creator.

Last Funeral Rites: Prayers were often held to thank and ask God the Creator to give the departed souls eternal rest.

Having known, loved and worshipped God the Creator, the Jopadhola through their Adhola Traditional Heritage (A.T.H) also believed in life after death. They also believed that the dead continued living and hence needed food, shelter, love and recognition. That was why children were named after them.

#### **VII THE WORSHIP CALENDAR**

Unlike the modern religions (Christianity and Islam) the Adhola Traditional Religions (A.T.R) had no seasons for worship such as Christmas, Idel-fitri, Easter or the like and no particular days for worship like Sundays,

Saturday or Fridays. Most of the worships were spontaneous, thus one worshipped as he wished, and compelled by the circumstances prevailing upon him or his people,

However, there were special occasions when they were obliged to worship collectively as in times of disasters or success. In Padhola, the knowledge of God, loving and adoring him made it easy for the people to convert and adopt the Modern Religions (Christianity and Islam); because these modern religions believed in, loved and adored one God.

### **CHAPTER THREE**

#### **MARRIAGE IN TRADITIONAL PADHOLA**

Marriage is the living together of an adult boy and girl as husband and wife. This was consented to by both families of the couples.

##### **1. Before marriage:**

(a) The boy was given vigorous training in craftsmanship of various forms: architecture, digging, hunting, defence, trade, worship and food security.

He had to pass all these tests, be clear headed adult with good moral qualities and be between 20 - 30 years old. The girl underwent similar training in domestic cores and child care; and had to be between 18-25 years of age.

##### **2. At Marriage:**

The intending spouses had not to be next of kin. The girl had to be a virgin and had to qualify in all the tests given to her at their home.

##### **3. The Parents:**

Both parties had to consent to their children's marriage. Marriage could never be entered into in the homes that had poor social, economic and moral degenerations. Both parents (the brides and the grooms) relatives paid familiarization and consultation visits to each others homes to ascertain the quality of behaviour.

The groom's parents often sent delegations with some valuable gifts in form of livestock, beads, ear-rings, ankle belts, bracelets, bangles, necklaces etc.

All these were gifts to thank the girls parents/relatives for having brought up their daughter in a responsible way, thus an ideal housewife.

**4. The wedding Day:** The bride was escorted by her sisters, brothers, aunts, grand-parents, a band of musicians and security operatives. The groom's relative welcomed the bride and her companions excitedly singing and dancing. The bride sat at the veranda of her mother - in - law's house for a ritual ceremony of blessing and anointing with cow butter (oil). This made her a married and wedded woman of that home and clan. She was then given a goat before she took a meal which was served in a wooden tray (wer) and earthen bowl (tawo). This bowl was kept away from her until another girl married in that home, then a similar ceremony was repeated. This tawo became the covenant of her lifetime in that home.

##### **1. THE BANQUET FOR THE BOYS RELATIVES**

The frequent exchanges of visits between the two families further cemented the already existing life long friendship. Finally the girl's parents prepared a big feast which included food, meat and beer, took them to the boy's home for appreciation of the gifts they had received from the boy's relatives.

#### **II FINAL GIFT (ABOR ORUMO)**

This ceremony was called friendship feast (Abor), because it was the biggest feast ever given to the boy's family of all others before. The ritual song here was "Abor ooy" (the best is over). However, the mutual love and trust continued to flourish between the two families with constant visits and sharing of the assets from both of them.

### III WERE THERE MARRIAGE LAWS IN ANCIENT PADHOLA?

#### YES!

There were unwritten customary / cultural rules and regulations on Marriage to be followed by every member of the Padhola community. These acted as guidelines for those who wanted to marry and those who had already married. Some of these laws were as follows:-

1. All adult men and women were free to marry and beget children
2. Disabled persons were encouraged to marry if they became disabled at a later age of their growth or adulthood.
3. Babies born with complicated physical deformities were put in new narrow mouthed pots and taken to the jungle and left to die there; because they were a curse to their families.
4. Marriage was prohibited between the next of kins.
5. Marriage was arranged and consented to by both parties (the boy's and the girl's) relatives.
6. Marriage was a life long contract entered into by both spouses.
7. Polygamous marriages were allowed and encouraged on the boys, but not the girls side.
8. Marriages were sacred, blessed and ceremonial at their inception.
9. Marriage was purposefully for procreation; to keep the human race in existence.
10. Marriage was to encourage love, honesty, peace, co-operation and security in the community; it also advocated for socio-economic development.
11. Marriage was God's gift; it had to be studied well before, entering into its life contract.
12. Marriage enabled family members to amass their required wealth.
13. These laws were to be accepted, protected and defended by all types of marriages as in 14.
14. The children born under these marriage systems (monogamy, polygamy, Polygyny, polyandry) were all considered legitimate.
15. The rights to genetricem. levitate, sororate, uxorilocal. matrilocal. Virilocal and neolocal were accepted, obeyed and protected.
16. In the kinship, descent was always traced through the patrilineal system and not matrilineal or cognatic systems.
17. The parents-in-law were accorded great respect and reverence by their sons - in law and daughters - in - law.
18. There were no homosexuals or lesbianism in any society in Padhola; and beastualists were not allowed to marry; they had bad omen in the society.
19. Sons were free to inherit their step-mothers and continue producing children with them after the death of their fathers or uncles.
20. Two sisters were allowed to marry one man and live together peacefully.
21. If a man married his late brother's/relative's widow, he had to marry an unwidowed woman, because the widowed one was not his legal wife.
22. Dead couples were burned beside each other's grave.
23. The children were not to inherit and sleep in their dead parent's uncles' aunts' houses.
24. Only the sons but not daughters were allowed to become heirs and inherit their late parents' estates.
25. Women were buried at their husband's homes, but not at their parent (women's parents') homes.
26. Impotent men were encouraged to marry, because their brothers would beget them children with those women; and the barren women persuaded their sisters to marry their husbands so that they (the sisters) would produce children for them (the barren women).
27. Young couples were exempted from seeing their dead children being lowered into the grave.
28. Girls were taught sex education by their grandmother, aunts and elderly sisters, while the boys received similar instructions from their grand fathers, grand uncles and elderly brothers, but not their biological parents or guardians. This was a taboo.
29. The newly wed women did not share meals with their males - in - law, but were free to share with females-in-law.
30. Parents - in - law did not share meals with sons - in law but shared drinks.
31. Marriage was dissolved between the next of kin, and a burning ritual ceremony was conducted to cleanse their sins-incest
32. If a parent - in - law fought a son-in-law or daughter-in-law, the loser of this case was heavily fined to compensate the winner. This was followed by a ritual ceremony to cleanse the two of incest.
33. When a twin parent or twin child died the body was buried at 7.00 p.m.

34. A widow could not remarry till the last funeral rites of her late husband had been celebrated by the relatives.
35. Marriage was not classified as religious, civic or traditional, it was cultural and sacred.
36. Marriage was the union of adult spouses living together peacefully and harmoniously.
37. Married couples' behaviours were controlled by cultural activities, norms and practices.

#### **IV. WERE MARRIED PEOPLE EMPLOYED IN PRIVATE OR PUBLIC SECTORS?**

Employment is a system of rendering services and or goods to an employer and receiving back a token of appreciation called salary or wages.

1. In the ancient Padhola, families practised communal labour system to sustain their members; and the activities here included among other things: cultivation, herding, hunting and craftsmanship. These encouraged love, unity and development in the families.
2. However, the rich required more labour force in their enterprises, hence deployed only the poor male folk in this case.
3. There were no big industrial sectors which could deploy more manpower; however most people remained self-employed.
4. The skilled people taught their own children and relatives the utilization of these craftsmanship's such as architecture, black smithing, pottery, textiles etc.
5. There was no formal education here, but the skilled persons had workshops at their homes where they taught their children through observation, practice and production.
6. The skilled personnel could also be hired out e.g. wood carvers, pot makers. Therefore, self-employment was the main labour sector; and in all these cases, the males were often employed. The females were also skilled in their daily domestic chores in their homes.
7. Shepherds were hired by the rich cattle keepers for payment of a cow for a period of time.

## **CHAPTER FOUR**

### **THE BRIDE PRICE**

#### **I. WHAT IS BRIDE PRICE**

1. A price is an amount of money for which something may be bought. It is i.e. a sum of money paid to some one for capturing or killing somebody; it is also payment demanded over a prisoner of war or a captive or abductee before he/she is released. A price is determined by the current flow of demand and supply of the market goods. It is also determined by inflation.

A bride is a newly or would be wed girl to a male spouse of her choice. It is hence difficult to impose any price whether monetary or otherwise on her. Prices on human beings were encouraged during the "slave trade" era.

Dowry is offered to the boy's family by the girl's in some communities in the Asian world. Looking at the statements above, it becomes very clear that Jopadhola have never sold their daughters for a PRICE in marriages. However mutual gifts were offered by the boy's parents to the girl's parents. Jopadhola married their beloved spouses in good moral understanding and God fearing spirit. Similar activities are found in the Holy Bible about marriage.

2. There were inter-marriages with the neighbouring communities like, Nyole, Gwere, Samia, Gisu, Soga, Kenye, Teso, Luo and Jopadhola. Those greatly consolidated fraternity among these societies that often exchanged marriage gifts accordingly.
3. Jopadhola regarded marriage as sacred because its objective was for pro-creation of more members in the community.
4. Married women were highly respected because they were the mothers of the society responsible for upbringing of dedicated and patriotic future citizens; hence pricing marriage was unnecessary.

## **II WAS THERE BRIDE PRICE IN THE TRADITIONAL PADHOLA? NO BECAUSE**

1. Marriage right was God given
2. Marriage was sacred, cultural and ceremonial.
3. Marriage was arranged and consented to by both spouses' families (the groom's and bride's).
4. Material gifts were offered by both families thus the boy's home offered animals, tools, ornaments and the girls family offered food, drinks and meat to the boy's home.

## **III HOW DID THE PRIDE PRICE COME TO PADHOLA?**

1. Jopadhola participated in inter-slave trade with their neighbouring communities mentioned above by exchanging prisoners of war, captives, abductees, lost persons and natural disaster victims. These slaves were used as house servants/ maids and labour force.
2. Barter Trade was common here just as was in most parts of Africa e.g. the "Trans-Saharan or Distance Trade" in the North and North western Africa in gold, salt, cloth, earthenware and ornaments. Jopadhola followed the Barter Trade system, although it was difficult to find somebody who wanted and had what someone had and wanted, e.g. if someone had a goat and wanted millet, he had to look for somebody who had millet and wanted a goat.
3. Both the slave and barter trade were practised in Padhola until around 1890's when the colonial power came and began to suppress these trades. However, the barter went on and it is still carried out in Padhola today. But to control and eradicate the slave trade, the colonial Governance began to introduce new crops like: rubber, sisal, coffee, cocoa and cotton for legitimate trade. This was the introduction of legitimate trade using the money currency value.
4. However, some of the above cash crops failed and cotton was recommended by the then colonial power. Many Jopadhola grew it in large quantities and sold it for money currency.
5. Formerly marriage gifts were offered in material form by the spouses 'families, but some people now began to include the monetary forms in these bridal gifts. They also began to value their material gifts such as animals, tools or ornaments into cash money.
6. The families of the intended couples also began their consultations by bringing in the idea of monetary currency value.
7. The colonial Governance then came in with the idea of the "BRIDE PRICE", a foreign ideology, and asked the African Local Administrations to enact "Bye Laws" on the same. This was the beginning and the application of the "Bride Price" in Padhola as well.

## **IV THE EFFECTS OF THE BRIDE PRICE IN PADHOLA**

1. Monetary value destroyed the formal system.
2. The poor youths could not Marry, their intended beloved spouses.
3. Under age or early marriages were encouraged by the rich families.
4. Promiscuity became common leading to unplanned birth by the youths.
5. Sexually Transmitted Infections (STI) became rampant.
6. The Girl Child education was undermined as the girls were then used as wealth resources.
7. Broken marriage became common, because the husbands received their marriage wealth from the wife's parents.
8. Neglected children went to the street.
9. Some large families lacked the basic resources to sustain their members.
10. The Christian churches preached life marriage. "One man one wife till death do us part; and what God has joined let no man put asunder" gospel.
11. Separation favoured the male spouse, but not the female one who was sent away empty handed; as all the children plus accumulated resources remained with the husband whom the bye-law very much protected.

## **V. SUGGESTED REMEDIES ON THE BRIDE PRICE**

1. Adult persons of 18 and above years should be allowed to marry at will.
2. Both girls and boys should be accorded equal education opportunities, so that they can learn more valuable skills in life.
3. District Local Government should revisit the "Bride Price" bye-law because there have been so many changes in the society.
4. Cultural leaders should advise the society on the same issue
5. There should be mutual understanding between the families of the intending spouses.
6. There should be softer words such as marriage gifts "marriage appreciation" etc. rather than Bride Price which takes us way back into the slave trade era where human beings were priced and sold like goods.

## **CHAPTER FIVE**

### **DOMESTIC VIOLENCE IN PADHOLA LAND**

#### **1. WHAT IS DOMESTIC VIOLENCE**

This could be defined in several terms as understood by various quotas, however some of the common definitions could be the following:

Domestic violence is:

1. The constant quarrels between spouses often leading to physical harm to either party.
2. The persistent grudges and misunderstanding in the family usually leading to mistrust among the members.
3. The continuous un-budgeted or unplanned spending of the family material and financial resources by a member causing acute shortage of these resources in the family.
4. The common immoral behaviour by a member or members leading to dishonesty and loss of confidence of such persons in the family.
5. The regular neglect of one's responsibilities often leading to insecurity in the family.
6. The physical battering of a spouse or any family member by either member is domestic violence.
7. An unbecoming behaviour of a family member or members leading to physical torture, economic decline, social set back, moral turpitude is all domestic violence.

#### **II WHAT WERE THE POSSIBLE CAUSES OF THE DOMESTIC VIOLENCE IN PADHOLA?**

The causes were: Social, economic and cultural in nature.

1. Barrenness: Jopadhola believed so much in child bearing as this kept his race existing
2. Infant Mortality: This too was attributed to women as being the cause.
3. Single sex birth: Jopadhola believed in gender balanced births.
4. Delayed births: Some women applied natural family planning. This angered their husbands.
5. Multiple births: Like twins, triplets or quadruplets were of very high honour to the family. More so the husband and his wife who got new names of Twin father and Twin mother (Baawengi and Minwengi) respectively. This encouraged some people to have multi-marriages.
6. Labour and security: Jopadhola wanted many members in the family for the provision of the above.
7. It became difficult to cater for larger families using the meagre resources that were available.
8. Natural Disasters: Problems such as epidemics, landslides, floods, famines created big gaps among the family members causing scarcity in the resources. Equitability was difficult.
9. Wife inheritance by the deceased's relatives strained the good relationship between the two families.
10. Accusations of moral turpitude by either spouses encouraged home quarrels.
11. Having babies out of wedlock was always blamed on the women not men spouses.
12. Man's failure to provide for his family's needs encouraged domestic violence.
13. Abject Poverty: Poor families could not sustain themselves socially and economically. Members often blamed each other for this failure or mischief.



14. Lack of time management: many rural dwellers had little managerial skills in their day to day activities, hence fell short of supervisory roles and found themselves behind schedule at the end.
15. Poor cultural rules or beliefs where some family members were prohibited from the performance of certain tasks e.g. women were not allowed to milk or herd cattle, clear the bush, eat chicken.
16. The death of a family leader caused wrangling for his/her heirship and estate.
17. Only the males were allowed to become heirs and inherit the property of their dead relatives, the females were exempted as such.
18. Ignorance made some members break the existing laws that protected the rights and freedoms of the individual.
19. Poor resource management caused the neglect of some members' basic needs by others.
20. Broken marriages led to some members abandoning their family and settling in awkward places such as slums, streets etc.
21. Age Bracket: Some young family members tended to over demand several services from their meagre resources. This led to family discomfort and quarrels.
22. Political and Religious affiliations tended to divide the family members along those lines.
23. Unemployment: unemployed persons found it hard to support their families economically and socially. They instead inclined to their working neighbours for personal support, thus forgetting their families. This brought about stress and worries leading to perpetual quarrels and grumbling in the family.

### **III WHAT WERE THE EFFECTS OF THE DOMESTIC VIOLENCE IN PADHOLA?**

1. Crime vulnerability: The members became prone to common assaults that often time led to bodily damage and even death of a member or members of a family.
2. Broken marriages: Tore the families apart.
3. Poverty: was encouraged by the domestically violated families.
4. Some destitute and street kids: originated from the domestically violated home.
5. Insecurity: became common through domestic violence.
6. Socio-economic underdevelopment: was often exhibited by the domestic violence throughout its uncontrolled poor behaviours.
7. Lack of unity and patriotism: The people accustomed to the domestic violence were often a threat to the society, because they left all their civic responsibilities to other people in the community.
8. The children in the domestic violated homes grew up with poor morals, lacked guidance and direction on public issues. They were a menace to the government.
9. Domestic violence encouraged under age and trial marriages.
10. It discouraged moral, socio-economic development of the affected persons.

### **IV. HOW WAS DOMESTIC VIOLENCE SETTLED IN THE TRADITIONAL PADHOLA?**

1. The nucleus family members discussed their in-house problems amicably and resolved to forgive each other. This encouraged love and peace in that family.
2. Jopadhola lived in homesteads in extended families with an experienced leader who acted as a judge, a counsellor, a guide and chief advisor in the homestead. This encouraged cooperation and patriotism.
3. In the most severe case, both (the boys and girls) families sat together and solved their children's domestic problems. This encouraged confidence in each of the two families.
4. Where it became difficult to decide upon a domestic case, usually the spouses were requested to stay apart for sometime then, they would reconcile and live peacefully again.
5. Divorces were highly discouraged in favour of the children and family members who would be the victims of circumstances later.
6. Cooperative ventures like communal labour, hunting, ceremonial functions and cultural activities such as recreation encouraged peace in the homes and the community at large.
7. Communication systems were known to all the members of the society. Tools such as trumpets, whistles, drums, fire, road-marks, bells and sound systems such as alarms and ululations, helped in conveying different messages that were understood and reacted to by every member of the society. This encouraged security alertness.

8. The losers in the domestic violence cases were often heavily warned, fined and asked to pay compensation to the winners; and in case of a female loser, all the payments came from her parents' home. This encouraged respect among the family members.
9. The juvenile offenders were often punished and counselled by their parents relatives. This encouraged the good behaviour of that home.
10. The perpetual adult offenders were in the long run excommunicated from that society.
11. There were no built prison cells for the detention of the offenders, but they were surrendered to the chief who tied them using wooden handcuffs for some days and released them after paying the fines.
12. The valuable gifts offered by both families to each other at marriage encouraged mutual understanding and love between them. This controlled domestic problems in the family.

## **VI. THE FAMILY RESPONSIBILITIES TO FIGHT / CONTROL DOMESTIC VIOLENCE**

1. The Spouses should:
  - a) Have mutual understanding between themselves throughout their married life.
  - b) Plan for the family budget and account for the utilisation of all the family assets and liabilities.
  - c) Create and encourage some viable income-generating activities for the sustenance of their socio-economic growth.
  - d) Seek family planning facilities and utilise them.
  - e) Give their children the facilities for their basic needs including health care and education.
  - f) Encourage good moral values in their family members, more so the children
  - g) Prepare their children for patriotism and future leadership.
2. The children should;
  - a) Appreciate their parents' love and care for them by reciprocating positively.
  - b) Show solidarity with the parents in the moral and socio-economic development of their homes.
  - c) Interpret the values of love and unity to their neighbour; and any other member of the society practically.
  - d) Participate fully in the cultural functions in their community e.g. funeral, birth, music, dance and drama, and marriage ceremonies.
  - e) Respect the special interest groups such as the orphans, widows / widower, the elderly, the differently abled and the sick.
  - f) Participate effectively in youth activities such as recreational clubs, associations and group within their localities.

## **DEFINITION OF DIFFICULT TERMS**

Abject Poverty - Poverty of the highest order.

Abor - a banquet prepared by the girl's relatives and taken to the husband's home.

Abor ooy - end of the most required feast from the bride's parents to the groom's.

Abor Orumo - See Abor ooy above.

Ancestral Worship - adoration in relation to the departed souls of the family or clan

Barrenness - infertility, having no children born.

Bride Price - the money or wealth paid to bride's parents at marriage.

Budama - the original land of the Jopadhola.

Chip - traditional skirt often made of animal skin, sisal or banana fibre.

Cognatic - the descent is traced through both the males and females.

Descent - the way kinship is traced.

Dowry - the gifts the bride and her Kinsmen give to the bride groom and his kinsmen.

Gene tricem - The right a man has over a woman he considers as a mother to his children.

Levitate - The rule that binds a brother to marry his brother's widow.

Matrilineal - Descent is traced through the females (mother) only.

Matrilocal - The new couple establishes their household in the area where his wife's parents live.

Monogamy - marriage to one-man one woman at a time.

Nyachip - The Katandi swamp which; washed away Mrs. Adhola's skirt.

Nyajuria - The name of Adhola's second wife.

Patrilineal - Descent is traced through the males only.

Polo - Heaven, where God has his palace.

Polyandry - state of one woman having more than one legal husband at a time.

Polygamy - the practice underlying marriage as a union of one spouse to several spouses at a time.

Polygyny - One man marrying more than one legal wife

Rombo Yamo - a scapegoat or sheep sacrificed to send away death.

Siriet - polished white animal skin worn by a Japadhola traditional priest.

Sororate - the rule that binds a sister to marry her sister's husband when the other one dies or is barren.

Taboo - cultural or religious custom that forbids one to touch, use or carry certain objects declared sacred.

Tawo - earthen bowl used for carrying the sauce at meal time.

Uxorilocal - the new couple establishes their household in the area where the wife's parents live. (See matrilocal).

Virilocal - the new couple establishes their house hold in the area where the husband's parents live.

Wer - wooded tray used for serving food.

Yamo - death, a ghostly being believed to cause death in an area.

# **PRINCIPLES, VALUES & NORMS OF BRIDE PRICE, THE LANGO CONCEPT**

**By: Florence Omara**  
**CAMPAIGN AGAINST DOMESTIC VIOLENCE IN COMMUNITY (CADOVIC)**

## **OUTLINE OF PRESENTATION**

- Introduction
- Principles of Bride Price
- The values & norms of bride price and its rights implications.
- Way forward

### **Introduction**

- Bride price is monetary and material wealth, which is given by the groom in exchange for a bride
- The shifting pattern of bride price
  - From food stuff (1900s) to a current collection of materials wealth
  - From an average of 10 metres of cattle to a few and a greater tendency to monetize the practice
  - In terms of consent, situational context education level
  - From non-consenting adults to an observed pattern of marrying amount more consenting adults.

### **Principles of Bride Price**

- It is demanded by the girl's family and paid by the boys family
- Paid by instalment
- Meant for social investment; for marrying another women in the clan
- Initiation ceremony of bride price into new clan, though dying out
- Refunded in case marriage does not work out
- Amount to be paid set by girl's family. Final amount depends on bargaining power.

### **Perceived values and Norms of bride Price**

- From cultural perspective
- Building relationships
- Expansion of the groom's clan (cows multiply while bride must produce children)
- The amount of bride wealth paid and the number of wives is a source of prestige

### **From groom's family perspective**

- Self respect
- Recognition to adulthood / manhood
- Source of power / authority (self esteem)
- Acquiring tools for production

### **From Bride's family perspective**

- Wealth acquisition (marriage, debt payment, school fees for boys, food security)
- The bride feels secured (burial, sense of belonging)

### **Bride Price and Human Rights**

- Women relegated to status of property
- Women have no rights since they are property. 'How does a property which I bought claim to have rights when I paid bride price?'
- Wife battering without seeking for redress. How can a property sue it's owner? Case study of Nelly.
- Women have no control over their sexuality (family planning, HIV/AIDS)
- Widow inheritance
- Women do not control even their own labour

- Women are in a state of hopelessness in regards to their human rights
- Barrenness is unacceptable – a barren woman must make wealth to marry her co-wife.
- Women do not have authority over children and household property
- Women have no voice
- A married woman belong to the husbands clan
- A woman must abide by the cultural rules, taboos and practices, some of which are dehumanising e.g. initiation into the clan (tweyo lao)
- Forced early marriage to acquire wealth to meet family demands (case study of 14 year old girl exchanged for the services of a 55 year old Traditional Medicine man)
- Girls used as traps to attract wealth especially “defilement” cases.
- A woman rarely initiates divorce since it means immediate refund of bride wealth.
- Women remain in abusive relationships.
- A married woman can be stopped from gainful employment by the husband (abuse of economic rights)
- A woman can not contest any political position without the consent of her husband
- Girls denied right to education in preference for bride wealth and boys education.

### **Effectiveness of Legal frameworks/Mechanisms**

- Constitutions of Uganda: articles 21, 30, 33 provides for equal treatment of all persons; rights to consent to marriage, at its initiation and dissolution; and prohibits laws, cultures and traditions which undermine women’s dignity ...;
- But the domestic relations bill, which should have supported the enforcement to these provisions, has remained a bill for over 30 years!
- Under the Marriage Act, one has to abide by the rules governing the type of marriage he or she chooses
- Most issues to do with domestic relations are brushed off as private affairs by judicial legal organs (e.g. Nelly’s case)
- Misuse of power e.g. LCs handling defilement cases and negotiating for out of court settlement
- Institutions like Uganda Human Rights Commission are far away from peasants.

### **Recommendations**

- Domestic Relations Bill be debated in parliament and enacted in harmony with the constitution of Uganda
- Marriage gifts be non- refundable
- Bride price/ bride wealth be outlawed
- User-friendly systems be developed and implemented for addressing issues of abuse of women and children’s rights.
- Uganda Human Right commission should be decentralized to districts.
- Women should be educated on their rights
- Services should be taken nearer to the people
- Economic empowerment of women so that they are assertive.

# **BRIDE PRICE AND PARTICIPATION OF THE YOUTH AMONG THE LUO IN KENYA**

**By: Florence A Wanga**  
BADILIKA CBO PROJECT  
PO BOX 124 SONDU-KENYA  
[Email-badilika@yahoo.com](mailto:Email-badilika@yahoo.com)  
254-721818929

## **BRIDE PRICE AND PARTICIPATION OF THE YOUTH AMONG THE LUO IN KENYA**

The issues in the institution of marriage invoke keen and critical focus especially now when human relations are substantially influenced by the socio economic and technological changes. The process of actualizing marriage is as significant as the institution. Bride price and other related marriage gifts or traditional negotiable tokens offered to and by parents occupy strategic positions within the realm of traditional processes in African marriages. For the youth, their position and role in this process remains scantily explored and explained. The justification of the youth's involvement and the resultant impacts outlined on their lives are more of assumptions and raises significant questions about their participation.

This paper attempts to examine the position that the female and the male youth occupy and the roles they perform during this process, considering the fact that such forum acts as learning grounds for those yet to marry, especially among the Luo in Kenya. The paper further explores these positions and roles at different stages of the price like, preparation, reception, negotiations, and payment of bride price and delivery of the price and the participation of the youth.

The paper concludes by examining the impact of their involvement in the exercise with particular attention on how it affects them psychologically, materially and socially.

For purposes of this discussion, bride price is seen as the traditional negotiable tokens offered to the parents of a girl set to be married, through the boy and his company, by the family of the boy. Among the Luo in Kenya, the boy and his companions on the bride price entourage are viewed as messengers of their respective families. They are messengers with some items to offer and also authorized to negotiate on behalf of their families what the in laws on what they would want in addition to what has been carried or taken.

The youth in this context, mean those boys and girls of upper primary school age and secondary education school age, particularly those not married, even when they have children.

Bride price process among the Luo is accomplished in two vital stages, which can be executed simultaneously or separately depending on preparations and circumstances prevailing for the involved families.

The first stage is called "Tero Ayie" (seeking consent of the girls parents). In this stage the boy having met the girl elsewhere or through a go-between arrangement, makes an appointment to visit the girl in her parent's home, purposefully to introduce themselves and seek the consent of the parents. The visit that normally lasts only hours within daybreak, involves the girl being asked in front of her visitors whether she knows the visitors and whether she accepts the purpose of their visit to their home.

If she consents to both (Oyie), then the visitors offer a financial token to her mother or one in her position at the moment. The amount is not standard but varies depending on the socio economic status the family of the boy. The "ayie" is not negotiable and its handed over by one member of the entourage to the mother. Lately, other monies of less amounts are distributed to the cooks who includes all the girls in the home who participated in the ushering, welcoming, cooking and serving; also a little amount to the boys in the home, a little more to the male and female elders and those the girl calls her aunties and uncles. This is not counted as bride price. Should there arise a need to refund the bride price, only the amount given to the mother will form part of the price to be

refunded. Those other financial offers are considered as generosity of the visiting entourage to the ceremony. Many times, they are contributions made by those who accompany the boy.

The second stage is called “nyombo” meaning delivering or paying the price to the girls parents. In this occasion the boy set to marry and his company, visit their in laws home for a second time to deliver the token in the form of cattle and one or few goats. We are yet to establish what determines the number of the companions and the number of cattle and goats. The visitors then engage the girl’s family in negotiation. What influences the outcomes is an area that require exploration, for key considerations, key players, nature of game of wits and power play that ensue have not been documented. The agreed number of cattle is normally expected to be paid in instalments. The purpose of this instalment arrangement in the Luo community is another area that requires further inquiry for this instalment has implications whenever there are disputes in the family and sometimes when the girl dies leaving the husband and children. The other implications which are not clear are whether it makes the potential husband and the wife respectable in the eyes of the two families and friends or whether it’s the individual behaviour that counts. After the bride price has been agreed on, the entourage announce the number of cattle they came with, the ones they are yet to deliver based on the agreement and the amount they carried to give the father, there are also other moneys for the cooks, boys, aunts and uncles and the elderly just like during the ‘ayie stage. More inquiries need to be directed to establish what determines the amount and those to be offered the other monies. The payment of bride price after these arrangements is normally a formality conducted by one older member of the boy’s entourage and he invites other members of his entourage to take turns in passing envelops of money to various category of persons receiving the money including the father. The exception is the boy marrying who sits and observes the entire process without being engaged verbally. After the formality, its time for more eating, drinking and dancing until next morning when guests take breakfast and leave for their home leaving the girl behind to follow later on her own or to be escorted by other girls to her new home. The reasons for leaving the girl behind are various but also require further inquiry since it has implication in terms of the teachings she receives and how she establishes herself in her new role as a wife and daughter in law in her new environment.

Bride price occasions are not a nuclear family affair in Luo community, they are occasions conducted with the consent and in the full presence of the wider family including grandparents, uncles, aunties, cousins and friends including church people. The gender balance spreads from male and female elders, male and female adults, male and female youth and male and female children.

The position of the male and female youth in such occasions defines their participation levels in the bride price process. Bride price process has stages, which include preparation, reception, negotiations, payment of bride price, and delivery of the price after the price ritual and departure of the boy’s entourage. The position and participation of the youth, those from the family of the boy marrying and the girl being married are perhaps limited to two levels. That of being facilitators of logistics and learners through participant-observation.

As helpers or facilitators, the boys engage in helping with clearing and cleaning the host compound, preparing outdoor sheds, trimming fences and running errands like being sent to buy food and drinks, passing messages to relatives and friends of the family about the impending occasion, while the female youth help with cleaning of house, clothes, utensils, cooking and in-house decorations. The youth position as facilitators extends rather feebly to the reception stage where the male youths role is diminishing noticeably while the female youth participates in the ushering in of guests, welcomes them and ensures they are seated in the correct room or place in the house or compound.

The female youth is encourage by the family members to inquire from the guests what types of soft drinks they may wish to take for a start. The dynamics including the specific players, specific roles and considerations on who will play these roles are areas that need to be explored further, since it may have a negative implication in the socialization process of self-esteem of girls during this stage of bride price. For the boys the psychological and social implication of excluding them during reception is yet to be understood with regard to how they later perceive themselves in the process of Bride price at this stage.

During negotiations, the male and female youth are totally excluded and even one or any who accompany the marrying entourage is reduced to just watching after introducing themselves. Earlier, the position of the youth at this stage is that of an observer expected to learn informally, the process of negotiation. The implications of

these exclusions are yet to be understood on the youth. Incidentally, the boy marrying sits through it and the girl is locked out. Could this be part of the cause of later marital problems of poor communication between the two on crucial issues touching on decision-making process? The same exclusion of the youth is observed when the price is being handed over. They are expected to remain quiet and observe.

Having gone through this process, it is only fair to ask whether the youth do have any feelings, opinions and perceptions of their experiences. Their expectations, fears, immediate gains and experiences must be examined. Starting with expectations, it emerges that most male youth expect some little token from the guests (mar yawuoyi). Studies have not revealed where this expectations emanates from? While the girls also expect (mar jotedo) for the cooks. The youth of both sexes expect a lot of food and drinks and dancing during the 'nyombo' stage when the guests normally spend a night in the host compound. The male youth expect that peace must prevail during such occasion and are expected to intervene even physically to restore order should some other youth attempt to intrude and be disorderly.

The fears that linger on in the minds of the youth about and during this occasion gravitate heavily on impending permanent loss of a member of the family in the case of a girl, or the impending arrival of a stranger in the family, in the case of a boy bringing home a bride. The fear is mainly about characters, personality and behaviour. The youth tend to worry about the safety of their sisters being married away or tend to be anxious about the character of the incoming bride in the home.

In conclusion the experiences of the youth in the bride price occasions are both formal and informal. The formal experiences are observed from the systematic flow of traditions as they are practiced on such occasions, while the informal experience are interactions with manners, dressing, courtesy, conversations etc. It is a highly interactive environment of group dynamics in which each moment is unique and precious and experienced differently by all including the youth. As it stands, it is not clear which agents of socialization present in the bride price occasion impact more meaningfully on the youth; whether it is the parents, the peers or the family at large or even the guests?



## **Appendix 1 Workshops**

### **Main Theme**

Coalition and Action to safeguard women and children in the family.

### **Sub themes**

#### ***DAY ONE***

#### **BRIDE PRICE ANALYSIS: CAUSES, ROOTS AND LOCAL JUSTIFICATION/LEGITIMACY (plenary session)**

- Naming the problem: The place of bride price in human rights and development
- Historical evolution of bride price (social, political and economic)
- Bride price and gendered identities
- Bride price, conflict and socio-cultural transformation
- Religious and cultural perspectives on bride price

#### **THE HUMAN, SOCIAL AND ECONOMIC COSTS OF BRIDE PRICE (workshops/seminars)**

- The political economy of bride price
- Bride price and the protection of children from neglect, violence and abuse
- Health:
  - Bride price and improved sexuality
  - Bride price and the improvement of sexual and reproductive health and rights
  - Bride price and the fight against HIV/AIDS
- Gender violence:
  - Bride price, gender violence and interpersonal relationships
  - Bride price and improvement of family relations
  - Bride price and the participation of youth
- Human rights/legal

Review of national and regional laws relating to marriage and family protection

Review of alternative approaches to legal framework intervention in Africa

#### ***DAY TWO***

#### **INNOVATIVE APPROACHES ACROSS THE GLOBE: ELEMENTS, ACTORS, LEVELS OF ACTION (FGM, dowry, gender violence)**

##### **(Workshops/seminars)**

- Working with survivors
- Work with men (perpetrators and allies) and youth
- Behavioural change communication work with young people, the informal sector and political leaders
- Strengthening strategically important institutions (health professionals, the police, the judiciary, teachers, social workers)
- Lobbying and advocacy within the political framework

#### **MOBILISING FUTURE ACTION: ELEMENTS ACTORS AND LEVELS OF INTERVENTION (workshops/seminars)**

- The challenge of building local and international legitimacy, increasing choices for women, strengthening women's safety, economic and social positions, and mobilizing resources
- Building alliances for change (putting bride price on the political agenda)

- Role of NGOs and government Institutions in improving women's positions in society and strengthening family relations.
- Tool-kits for social transformation and programme management (decision making, problem analysis, communication)
- Culture and National policy design and implementation (National health policy, justice, law and order sector policy, education policy, national gender policy)
- Identifying and enlisting agents of change

### ***DAY THREE***

#### **FORMULATION OF THE DECLARATION (workshops/breakaway groups)**

- Advocacy and public campaigns
- Behavioural change communication
- National policy programming, research and documentation

## Appendix 2 Participants List

List of participants attending the conference

Name	Organisation	Address	Telephone/Fax	Country	Email
Agnes Bukare	MIFUMI	P.O. Box 274 Tororo – Uganda	256 77 781122	Uganda	<a href="mailto:mifumi@mifumi.org">mifumi@mifumi.org</a>
Aida Watengu	Mbale District NGO Forum			Uganda	
Albino Osama	Action Aid			Uganda	
Alfred Osama	MIFUMI	P.O. Box 274	256 77 781122	Uganda	<a href="mailto:alfred_osama@hotmail.com">alfred_osama@hotmail.com</a>
Alice Dokoria	Women’s Council V	P.O. Box 482	256 77 521 781	Uganda	
Alice Emasu	The New Vision	P.O. Box		Uganda	<a href="mailto:emasu@hotmail.com">emasu@hotmail.com</a>
Ananilea Nkya	TAMWA			Tanzania	
Andrew Mugisa	AHURIO Fort Portal	P.O. Box 514	256 483 22165/ 256 77 315 896	Uganda	<a href="mailto:ahurioug@yahoo.com">ahurioug@yahoo.com</a>
Andrew Sorowen	Tororo Police Headquarters		256 77 506 146	Uganda	
Andy Rutter	MUFUMI			Uganda	
Ann w. Njogu	CREAW			Kenya	<a href="mailto:attorney@wananchi.com">attorney@wananchi.com</a>
Anna Amwengo				Uganda	
Anna Flora Aber	Action Aid			Uganda	
Anna Maria Obbo	L.C. V Councillor	P.O. Box 1 Tororo	256 77 680 939	Uganda	
Anne G. Awango	Action Aid			Uganda	
Asmao Joda	Women Living Under Muslim Laws	P.O. Box 28445 London N 19 5NZ	207 263 2166/ 207 263 02 85	U.K.	<a href="mailto:asmaujoda@wluml.org">asmaujoda@wluml.org</a>
Atuki Turner	MIFUMI	P.O. Box 274 Tororo	256 77 781 122	Uganda	<a href="mailto:mifumi@mifumi.org">mifumi@mifumi.org</a>
Beatrice Apolot	Mon Tekere Women’s Group	P.O. 17 Tororo	256 78 308 712	Uganda	
Beatrice Atyang	MUFUMI			Uganda	
Benda Chelangant	REACH (FNG) Programme	Kapchorwa	256 45 51555	Uganda	<a href="mailto:chelangatbeatrice2004@yahoo.com">chelangatbeatrice2004@yahoo.com</a>
Benda Guard	URDT	P.O. Box 24 Kagadi	256 0412 256704 256 77 396 649	Uganda	<a href="mailto:urdt@africaonline.co.ug">urdt@africaonline.co.ug</a>
Bernard Ochola	Alice Labol Foundation	Kampala		Uganda	<a href="mailto:alicefoundation@aol.com">alicefoundation@aol.com</a>
Betty Akullo	CEDOVIP	P.O. Box 6770 Kampala	256 414 531 249 256 77 993 717	Uganda	<a href="mailto:cedovip@yahoo.com">cedovip@yahoo.com</a>
Beverley Nambozo	UWWA Power FM	P.O. Box 24603 Kampala	256 78 376 053	Uganda	<a href="mailto:bevwithjc@yahoo.com">bevwithjc@yahoo.com</a>

Brian Kamugisha				Uganda	
Carol Idembe	FIDA Uganda			Uganda	<a href="mailto:fidauganda@africaonline.co.ug">fidauganda@africaonline.co.ug</a>
Catherine Etoori	Women and Youth Concern	P.O. Box 1 Tororo		Uganda	<a href="mailto:melaco2003@yahoo.com">melaco2003@yahoo.com</a>
Catherine Tina Sideris	Masisikumeni			South Africa	
Cathy Bob-Milliar	National Council on Women and Development		233 756 22403	Ghana	<a href="mailto:bcathygh@yahoo.com">bcathygh@yahoo.com</a>
Charles Osinde	MIFUMI		256 77 781 122	Uganda	<a href="mailto:mifumi@mifumi.org">mifumi@mifumi.org</a>
Cheryl Ayogu	Western Cape On Violence Against Women	Saartjie Baartman Women's Centre, Klipfontein Road, Surrey Estate, Cape Town	27 21 633 5287	South Africa	<a href="mailto:Cheryl@womencentre.co.za">Cheryl@womencentre.co.za</a>
Chris Baryomunsi	UNFPA			Uganda	<a href="mailto:cbaryomunsi@unfpa.or.ug">cbaryomunsi@unfpa.or.ug</a>
Connie Sarah Owor	Women's Council IV	P.O. Box 623 Tororo	256 71 725 949	Uganda	
Conny Adeka	Mother's Union Office	P.O. Box 170 Tororo	256 75 628 326	Uganda	
Consolanta Aywek	Apac Development Initiative	P.O. Box 167 Apac	256 77 301 962	Uganda	<a href="mailto:conwek@yahoo.co.uk">conwek@yahoo.co.uk</a>
Daniel Mbekar	Men for Gender			Kenya	<a href="mailto:heirudepo@yahoo.com">heirudepo@yahoo.com</a>
Danson Kahyana	Department of Literature, MUK			Uganda	
Dorothee Hutter	GTZ	Kampala		Uganda	<a href="mailto:dorothee.hutter@gtz.de">dorothee.hutter@gtz.de</a>
Dr. Anthony Okoth	Mulago Hospital			Uganda	
Dr. Catherine Keko	MIFUMI	P.O. Box 274, Tororo		Uganda	<a href="mailto:mifumi@mifumi.org">mifumi@mifumi.org</a>
Dr. Chidi Nweneka	Pro Hope International	15 Chief Amadi Street, P.O. 12099 Port Harcourt, River State, Nigeria	234 803 3367 351	Nigeria	<a href="mailto:projectshope@yahoo.com">projectshope@yahoo.com</a>
Dr. Dan K. Kaye	Makerere Medical School	P.O. Box 7072 Kampala	256 414 533451/ 256 77 587 952	Uganda	<a href="mailto:daankaye@yahoo.com">daankaye@yahoo.com</a>
Dr. Gill Hague	D.V. Research Group	Bristol, UK		U.K.	<a href="mailto:gill.hague@bris.ac.uk">gill.hague@bris.ac.uk</a>
Dr. Jane Okoth	Princeton			U.S.A.	<a href="mailto:janeokoth@aol.com">janeokoth@aol.com</a>
Dr. Joy Kyazike	RAINBO		256 77 500 278	Uganda	<a href="mailto:jkyeyune2002@yahoo.com">jkyeyune2002@yahoo.com</a>
Dr. Lydia Mugerera	PWA Forum		256 338102	Uganda	<a href="mailto:lydiamng@hotmail.com">lydiamng@hotmail.com</a>
Dr. Rita Schaefer	Humboldt University of		201 – 1775166	Germany	<a href="mailto:max.schaefer@-online.de">max.schaefer@-online.de</a>

	Berlin				
Dr. Sylvia Tamale	Faculty of Law, Makerere University		256 414 267015/ 256 414 543681	Uganda	<a href="mailto:stamale@muklwa.ac.ug">stamale@muklwa.ac.ug</a>
Ednance kiiza	Action Aid Uganda			Uganda	<a href="mailto:Ekiiiza@actionaiduganda.org">Ekiiiza@actionaiduganda.org</a>
Emmie Chanika	Civil Liberties Committee			Malawi	<a href="mailto:cilic@malawi.net">cilic@malawi.net</a>
Erin Culbertson	Plan			Uganda	<a href="mailto:emculbert@yahoo.com">emculbert@yahoo.com</a>
Eva Luswata Kwuma	Kakoza & Kavuma Advocates	P.O Box 29217 Kampala	256041341255/ 77 499195	Uganda	<a href="mailto:bakwana2000@yahoo.com">bakwana2000@yahoo.com</a>
Eva Ruth Auma	Mbale Concern Women Network	P.O Box 1483 Mbale	256 77 627 880	Uganda	
Evelyn Achan	ACORD	P.O Box 280 Gulu	256 471 32242 77 767667	Uganda	<a href="mailto:accord.uga21@acord.or.ug">accord.uga21@acord.or.ug</a>
Evelyne Okoth	PROMPT	Brunswick Court Brunswick Square		UK	<a href="mailto:evelynokoth@mifumi.org">evelynokoth@mifumi.org</a>
Evelyn Okoth (Mrs)	Women's Guild	P.O Box 923, Tororo	256 75 875543	Uganda	
Fati Alhassan	RUMNET	P.O Box 863, Tamale, Northern Region		Ghana	<a href="mailto:rumnet@africaonline.com.gh">rumnet@africaonline.com.gh</a>
Florence A. Wanga	BadilikaCBO	124 SONDU	254 72 1818929	Kenya	<a href="mailto:prettyfloh@yahoo.com">prettyfloh@yahoo.com</a>
Florence Omara	CADOVIC	P.O Box Apac	256 77 30864	Uganda	<a href="mailto:florence@actionaiduganda.org">florence@actionaiduganda.org</a>
Fr. Deo Eriot	Tororo Diocese		25677570872	Uganda	
Gaye Rokhaya	GREFELS	BP6233	2218246048	Senegal	<a href="mailto:rogaye@hotmail.com">rogaye@hotmail.com</a>
Genevive Awor Ndira	NALECO Foods	P.O Box 638 Tororo	256 75 810227	Uganda	
Geodfrey Obbo	Tororo Police		25677321776	Uganda	
George Akwoyo	MIFUMI	P.O Box 274 Tororo	256 77 781122	Uganda	<a href="mailto:mifumi@mifumi.org">mifumi@mifumi.org</a>
Gladys Kirungi				Uganda	
Glyn Turner	MIFUMI	P.O Box 274 Tororo	256 77 781122	Uganda	<a href="mailto:mifumi@mifumi.org">mifumi@mifumi.org</a>
Grace Anguparu	Womens	P.O Box	256 75 596957	Uganda	

	Guild	923,Tororo			
Grace Loumo				Uganda	
Grace Lwanga	MIFUMI	P.O Box 274 Tororo	256 77 781122	Uganda	<a href="mailto:mifumi@mifumi.org">mifumi@mifumi.org</a>
Hameed Agberemi	Centre for Social Study of Isalm	P.O Box 9738 UIPO, Ibadan		Nigeria	hameed.agberemi@ cessin.org
Harriet Akullo	ACORD	P.O Box 280 Gulu	256 471 32242/ 77 767667	Uganda	accord.uga21@acord. or.ug
Harriet Nakimuli	MA Student, Women and Gender Studies MUK			Uganda	hnakimuli@yahoo.com
Hedwig Oboth	MIFUMI	P.O Box 274 Tororo	25677781122	Uganda	mifumi@mifumi.org
Hellen Alyek	Police Officer			Uganda	
Hilda Woigyeirwe	Uganda Women Writers' Association	Kampala		Uganda	femrite@infocom.co.ug
Hobbs Gama	Journalist			Malawi	hobbsgama@yahoo.com
Holger Seubert	German Embassy, Kampala			Uganda	secretariat.gtz. uganda@ug.gtz.de
Innocent Lamono	ACORD	P.O Box 280 Gulu	25647132242 77767667	Uganda	accord.uga21@ acord.or.ug, <a href="mailto:Erin.culbertson@plan-international.org">Erin.culbertson@plan- international.org</a>
Isaac Wasswa	PLAN			Uganda	
Jane Frances Kuka	Anti FGM Crusader		25677495837	Uganda	
Jane Nakyizza	FPAU, Police		25677512095	Uganda	
Janet Gebber	Mbarara Women			Uganda	ours@utlonline.co .ug
Jennifer Okoth Ogolla	Local Activist			Uganda	
John Wadyangu Magumba	Sironko NGO Forum	Sironko		Uganda	pjmagumba.yahoo. com
Joselin Bigirwa Center	Kabarole Research	Kabarole	25648322165/ 77315896	Uganda	jbigirwa@yahoo. com
Josephine Alupo			25677957692	Uganda	
Joyce Bahati	COVAW	P.O Box	254 2574357/8	Kenya	info@covaw.or.ke

Mwangoji		1065800100 GPO, Nairobi			
Joyce Muchena	COVAW	P.O Box 1065800100 GPO, Nairobi	254 2574357/8	Kenya	info@covaw.or.ke
Julius Kapwepwe Mishambi	Terrewode- Teso Women for Development	P.O Box	25677499455	Uganda	emasu@hotmail.com
Kamota Ame'dee	CAURWA			Rwanda	kamotaam@yahoo.fr
Kevin Opera	WF			Uganda	
Kevin Ssenabulya	Kitovu			Uganda	
Laetitia Mbarushimawa	HAGURUKA Association	PO Box 3030 KIGALI	250514669/ 8300834	Rwanda	haguruka@ rwanda1.com
Lamek	TAWOVA			Tanzania	
Lydia Nakimera Kizza	Kalangala District Administration	PO Box 2 Kalangala	25677623993	Uganda	kal@actionaid. bushnet.net
Lylian Philip Sakaya	SIDO Tanzania	PO Box 6736 Dar el Salam	255744624459	Tanzania	
Lynda St.Cooke	British High Commission			Uganda	Lynda.stcooke@ fco.gov.uk
Magdalene Bukyabubi	Women in Health Promotion	PO Box217 Iganga	25677422853	Uganda	
Margaret Wanjiru	St Mary Magdalene	P.O. Box 14250 Nakuru		Kenya	
Margaret Akullo	Acton Aid	Lango Female Clan Leaders Association	25677896803/ 77770124	Uganda	apac@actionaid uganda.busnet.net
Margaret Oguli	Movement Secretariat		25677405057	Uganda	
Margaret Sekaggya	UHRC		25641348006/8	Uganda	rkarugonjo@uhrc.org
Margaret Alwala					margaretalwala@yahoo.com
Marguerite Garling	British High Commission			Uganda	
Martin Ochieng	Mifumi Community Male Counsellor			Uganda	ochiengm2003 @yahoo.com
Mary Asili	MIFUMI	P.O. Box 274 Tororo	25677781122	Uganda	mifumi@ mifumi.org
Mary Elsie Othieno	Day Aid Care	P.O. Box 4764 Kisumu		Kenya	maryelsie2003 @yahoo.com

Mary Okioma	Federation of Nairobi	P.O. Box 51079	254 020 229215	Kenya	marykemunto@vomen Groups yahoo.com
Mary Okoth	RAIN			UK	
Mathew Ndira	LAWLYN Ltd. Tororo	P.O. Box 123	256 75947352	Uganda	mathewndira@lawlyn.com
Mathew Osama				Uganda	
Matofu Abubakar	National Youth Alliance			Kenya	youth@ tgy mail
Maria Matembe of Uganda	Parliament of Uganda		256 77 483610	Uganda	mkrmetembe@ hotmail.com
MotokaKawa	Tororo Police		256 77 322362	Uganda	
Naava Nabageresa	President's Office		256 77 505424	Uganda	
Noerine Kaleeba	UNAIDS	Geneva		Switzerland	kaleeba@unaids.org
Norah Kwoba	BUDEF Tororo	P.O. Box 1126	256 77 587226	Uganda	<a href="mailto:budef@yahoo.com">budef@yahoo.com</a>
Omollo Leonard Eastern	Theatre Act		256 71 982 626	Uganda	omolloleonard@ yahoo.com
Opoka	Makerere University			Uganda	
Pastor Wilberforce Owor	Bible Faith Ministries		256 77 576184	Uganda	biblefaithug@ yahoo.com
Patricia Mugalula	Masisikumeni			SA	tinanded@Icon.co.za
Patrick Ndira	PROMPT Bristol UK	Brunswick Court Brunswick Square	44 177 916 6457	UK	patrickndira@mifumi.org
Patrick Tumwine	AHURIO	P.O. Box 514	256 48322165/	Uganda	ahurionug@yahoo.com
Peter Mugume	Dept. of Language Education MUK	Fort Portal 77 315 896	256 77 685129	Uganda	pmugume@ educ.mak.ac.ug
Peter Owori	MIFUMI Tororo	P.O. Box 274	256 77 781122	Uganda	<a href="mailto:mifumi@mifumi.org">mifumi@mifumi.org</a>
Racheal Nkosi Nsimbini	Masisikumeni			South Africa	<a href="mailto:tinanded@icon.co.za">tinanded@icon.co.za</a>
Racheal Rinaldo	University of Chicago				rarinald@midway.uchicago.edu
Rebecca Seidu	ZOVFA Bakwu, Upper East Region	P.O. Box 159	233 72 22928	Ghana	payamba158@ yahoo.com
Renee Jeftha	GAP Trainer	P.O. Box 8001	021 4650197 Africa	South	<a href="mailto:dv2@genmder.org.za">dv2@genmder.org.za</a>
Richard Nixon Okello	Makerere University Dept of Literature	P.O. Box 7062 Kampala	256 77604418	Uganda	<a href="mailto:okellorn@yahoo.com">okellorn@yahoo.com</a>



Robert Opedun	Kumi Human Rights Initiative	P.O. Box 140 Kumi		Uganda	
Robert Tumwesigye BWIFODO		P.O. Box 28 Kabale	256 77 509 393	Uganda	<a href="mailto:tumrobs@yahoo.com">tumrobs@yahoo.com</a>
Robert Wyrod	University of Chicago			USA	<a href="mailto:rarinald@midway.uchicago.edu">rarinald@midway.uchicago.edu</a>
Rogers Nsubuga	Uganda Prisons	Kampala	256 77 438666	Uganda	<a href="mailto:nsugarogers@yahoo.com">nsugarogers@yahoo.com</a>
Ronik Apio	MIFUMI	P.O. Box 274 Tororo	256 77 781112	Uganda	<a href="mailto:mifumi@mifumi.org">mifumi@mifumi.org</a>
Rosaline Obeng Ofori	Action Aid Ghana	P.O. Box 19083, NH 13 La Tebu Street	233 21 764931-2	Ghana	<a href="mailto:rsaline@actionaid">rsaline@actionaid</a>
Rose Ndekezi	Sacred Heart Women's Guild		256 75 622297	Uganda	
Rosemary Nansamba Bwogi				Uganda	
S.K. Olowo			256 329007	Uganda	
Sama Ekirapa	Community Development		256 78 372507	Uganda	
Saraha Akello	MIFUMI	P.O. Box 274 Tororo	256 77 781122	Uganda	<a href="mailto:mifumi@mifumu.org">mifumi@mifumu.org</a>
Semanda Silver		P.O. Box 9980 Kampala	256 71 880211	Uganda	<a href="mailto:silverkaddu@yahoo.com">silverkaddu@yahoo.com</a>
Serah Mworira	FOWAD			Kenya	<a href="mailto:serahmworia@yahoo.com">serahmworia@yahoo.com</a>
Sheila B. Keethaluth	Amnesty International		256 31 350100/ 41 252900	Uganda	<a href="mailto:skeethar@amnesty.org">skeethar@amnesty.org</a>
Shevan Kamugisha				Uganda	
Simon Kairuka	St. Mary Magdalene			Kenya	
Sophie Kasolo	Uganda Young Women's Organisation			Uganda	<a href="mailto:kayisa@yahoo.com">kayisa@yahoo.com</a>
Sylvester P. Oboth	Tororo District		256 77 538311	Uganda	
Teddy Nakelembe	MIFUMI	P.O. Box 274	256 77 781122	Uganda	<a href="mailto:mifumu@mifumi.org">mifumu@mifumi.org</a>
Timothy Yaile	Pastoral Women's Council	PWC, P.O. 72, Loliondo Tanzania	272 502300	Tanzania	<a href="mailto:crt@habari.co.tz">crt@habari.co.tz</a>
Tinyade Kachika	WILSA French Translator			Malawi	<a href="mailto:tkachika@hotmail.com">tkachika@hotmail.com</a>
Titus Ogavu	MIFUMI	P.O. Box 274 Tororo	256 77 781122	Uganda	<a href="mailto:mifumi@mifumi.org">mifumi@mifumi.org</a>
Vat Kamatsiku	UWONET			Uganda	<a href="mailto:uwonet@starcom.co.ug">uwonet@starcom.co.ug</a>

Veronica Abbo Ogolla	PLAN			Uganda	<a href="mailto:erin.culbertson@plan-international.org">erin.culbertson@plan-international.org</a>
Veronica Nakijjoba	Uganda Gender Resource Centre		256 77 890511		<a href="mailto:vnakijoba@yahoo.com">vnakijoba@yahoo.com</a>
Victoria Lwanga Lukwago	NAWOU	P.O. Box 386 Mityana		Uganda	
Wambui Otieno	FOWAD	P.O. Box 23966			
Wendy Asiama	Media and Health Coalition			Ghana	<a href="mailto:wasiam@yahoo.com">wasiam@yahoo.com</a>
Ziporrah Gathiti	UNFPA	P.O. Box 14250 Nakuru	256 41 345600	Uganda	<a href="mailto:zgathiti@unfpa.or.ug">zgathiti@unfpa.or.ug</a>
Mariam Naleba	Kiira College Butiki				
Hope Turyasingura	CEDOVIP	P.O. Box 1	256 41 531249/ 71 923711	Uganda	<a href="mailto:cedovip@yahoo.com">cedovip@yahoo.com</a>
			Topista Nyafono		
Maanda Ngoitiki	Pastoral Women's Council	PWC, P.O. 72, Loliondo Tanzania	272 502300	Tanzania	<a href="mailto:crt@habari.co.tz">crt@habari.co.tz</a>
Fardson Nuwahereza	The Computer Newspaper	P.O. Box 31195		Uganda	<a href="mailto:fanfardson@yahoo.com">fanfardson@yahoo.com</a>
Hellen Nangobi			256 77 999077	Uganda	<a href="mailto:helenangobi@yahoo.com">helenangobi@yahoo.com</a>

**Note: Since the conference the telephone numbering system has changed in Uganda. Any number listed starting with 256 7x should be replaced with 256 7x2. Similarly any number starting with 256 41 should be replaced with 256 414.**

## Appendix 3 Kampala Declaration on Bride Price

### THE KAMPALA DECLARATION ON BRIDE PRICE

Within the context of Coalition and Action to safeguard women and children in the home

In the Closing Plenary, 18 February 2004

At the International Conference on Bride Price, held at Makerere University, Kampala - UGANDA

Organised by



The Mifumi Project

With the co-operation of



Deutsche Gesellschaft für  
Technische Zusammenarbeit (GTZ) GmbH

GTZ – The German Technical Co-operation

With the financial contribution of

The British government UNFPA



act:onaïd



Rainbo

Action Aid



*Dedicated to Kulsum Wakabi and to the “Unknown Woman” herein described for their contribution to womanhood in their quest to secure freedom and happiness.*

## **The Kampala Declaration on Bride Price**

**WE**, the participants to the International Conference on bride price here assembled for consultation on the reform or abolishment of bride price, representing International and non-governmental organisations and grass-roots activists on the invitation of the MIFUMI Project, a Women's Rights agency, organised within the broader context of eradicating violence against women and girls, supported by GTZ – the German Technical Co-operation:

Uphold these truths to be self evident, that all people are born equal, that they are endowed with certain inalienable Rights, that among these are life, liberty and the pursuit of Happiness. That to secure these rights, culture, like governments are instituted among people, deriving their just powers from the consent of the governed.

Observing that culture is not static and that whenever any form of culture becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and institute new laws, laying its foundation on such principles and organizing its powers in such form, as to them shall seem more likely to effect their Safety and Happiness.

Recognising that Prudence, indeed will dictate that cultures long established should not be changed for light and transient reasons; and accordingly all experience has shown that humans are most disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. Recognising that when a long train of abuses and violations, pursuing invariably the same object evinces a design to reduce them in the guise of Culture, it is their right, its their duty, to throw off such culture, and to provide a new status quo for their future Security. Such has been the patient suffering of women under the Culture of bride price and such is now the necessity that constrains us to alter the current practice of bride price.

Upholding that the practice of bride price is a gross violation of human rights and exposes the victim to violence, abuse as well as numerous health risks and dangers. Recognising that bride price is a form of slavery, a violation of the fundamental rights of liberty, equality and non discrimination among others, and calls for states to abolish it. Confirming that the institution of bride price has far-reaching health, economic, social, human rights and legal effects in societies where it is practised and that it is a practice which subordinates women, objectifies them, commercialises marriage and threatens women's physical and mental health. Asserting that bride price is a practice that has outlived its usefulness and should be abolished in the societies where it is practised.

Being of the view that women should have the right to enter into marriage as free and equal persons and opposed to practices which consider women as property, as this could lead to violence against women; and upholding that women should be protected from all forms of violence.

Understanding that the sorts of violence against women are engulfed in patriarchy, religion, culture and power imbalances between men and women and in relationships and the gender socialisation in which we have been raised.

Condemning bride price as an economic violence committed against women since it requires an exchange of commodity (money, cows, etc) for a female person which implies a form of slavery of women in their married relationships.

Declare bride price as a violation of the rights of women to live a life free from violence and to live a life of equality with every human being.

And do hereby appealing to, national governments, regional bodies, and International bodies to abolish or reform bride price in accordance with the obligations undertaken by them as state parties or signatories to:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- Convention on the Elimination of all Forms of Discrimination Against Women

- Convention Against Torture
- The Convention on the Rights of the Child
- The African Charter on Human and Peoples Rights
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- The Beijing Declaration and Platform for Action agreed to at the Fourth World Conference on Women.

**WE, the participants at the International Conference on Bride Price, RECOMMEND THAT THE INSTITUTION OF BRIDE PRICE BE ABOLISHED.**

**WE, the participants at the International Conference on Bride Price further RECOMMEND THAT:**

7) Governments and civil society organisations should collect evidence in the form of testimonies, case studies, statistics, documentaries, etc on the social injustice occasioned by bride price including physical and psychological injuries and death. Cases linked to bride price should be also be collected such as domestic violence, early and/or forced marriages, denial of church/religious marriages, etc. Such evidence should be presented to national governments, cultural institutions, health bodies, international human rights bodies and donor agencies as the social, human and economic costs of bride price and service as persuasive material towards the committal of resources to reform or abolishing the practice of bride price.

8) Professional bodies should adopt clear condemning the current practice of bride price particularly where it violates existing legislation and apply strict sanctions to practitioners who violate those standards. Practitioners may be suspended or lose their licence or political positions. Maximum, punitive sanctions should be applied to; Local Councillors and leaders presiding over marriage of children under the age of consent and head teachers failing to report the drop out of girls from school due to early marriages.

9) Demanding the Refund of Bride Price should be criminalised and legislated against immediately. Law enforcement officer's unlawfully arresting and detaining people over the refund of bride price should face strict sanctions. In addition, they should face civil liability for malpractice or unauthorised practice of law.

10) Provided sufficient outreach and sensitisation has taken place, members of the community with knowledge of cases of demands for the refund of bride price, widow-inheritance, withdrawal of children from schools for early/forced marriages, unlawful/false imprisonment should be held criminally liable for failure to report such cases. Protection should be made available for those who come forward to report cases.

11) Strict sanctions should be applied to those uttering derogatory terms and verbal abuse relating to bride price, women and girls and the maximum penalty should be imposed. These terms include referring to women and girls as cows, or property.

12) The use of law should be one component of a multi-disciplinary approach to reforming the practice of bride price. Depending on the national context, outreach efforts by civil society and governments aimed at changing perceptions and attitudes regarding bride price should precede or accompany legislation on bride price. The outreach efforts should aim to educate the general public while targeting clan and cultural leaders, local councillors, religious leaders, teachers, social workers, family members particularly grandmothers and mothers-in-laws, women's leaders, grassroots leaders, young people and service members of the armed forces.

13) Women and girls should be empowered to access legal remedies specified by law to prevent bride price. In particular women and girls who are victims or potential victims of bride price have the right to protect themselves being "sold" into marriage. Legal aid practitioners should make available women's rights text and legal services to support them.

14) Girls who have been forced out of school for reasons of marriage and bride price should be supported through protection to return to school and to her family or resettled elsewhere. The role of the Probation Service and Child and Family Protection Units is particularly important in protecting girls from early/forced

marriages. Legislation condemning bride price has a moral force and an educational impact that could dissuade many individuals from submitting girls to the practice.

15) The age of a girl or woman or her consent to being subjected to the demand for or refund of bride price should not under any circumstances affect the criminality of the act.

16) Information on the social, economic and human rights costs of bride price should be in-corporated into school curricular and community educational programmes. Communities, particularly women and girls, should be encouraged to seek alternative ways of valuing women and girls for example through their skills and abilities and contribution to society.

17) The contribution of NGOs to development and social change is significant. NGOs and governments should regard themselves and work as partners to agitate for social change and prepare civil society for legislation on the reform or abolishment of bride price. Strategies to reshape attitudes and create fertile ground for change should include multi and integrated approaches including sensitisation, drama, discussion and debate, testimonials and documentaries, seminars and workshops.

18) Governments should resource NGOs and community groups with resources to create a climate where the campaign against bride price is engaged in freely. National Action Plans on Women and other related gender equality documents, reports issued by governments should include specific reference to bride price. Where this has been overlooked addendums should be immediately added. Governments should formulate smart objectives, strategies and programmes re-enforced by adequate resource allocations to reform or abolish bride price.

19) Parents should be encourage to provide marriage gifts to the new couple beginning a new home rather than to the parents. In addition, gifts to the groom's family and gifts to women relatives should be practiced.

20) In adopting new law, grassroots women, grandmothers and community based organisations, teachers, law enforcement officers among others should be part of the consultative process. Efforts to reform bride price must be focussed on empowering women to make choices that will impact positively on their lives and freedoms.

21) International Conventions, particularly Women's Conventions such as CEDAW should critically examine the practical relevance of application of any sanctions against bride price in the face of legal pluralism in Africa and adapt new laws to effectively address women's human rights under culture.

22) Governments should implement the regional and international conventions that they have ratified protecting the rights of women and children, and comply with their obligations to take action to end practices that harm women and girls, including by adopting legislation prohibiting bride price. Implementation measures should include translation of these texts into national languages and outreach programs to ensure broad knowledge of the rights protected. Civil society could promote government accountability under these treaties by using UN treaty monitoring bodies. NGOs can use treaty bodies' concluding observations and recommendations to push for additional government action.

**WE, the participants in the International Conference on Bride Price  
LUANCH THE KAMPALA DECLARATION,**

Appealing to Heads of State, governments, parliaments and responsible authorities in concerned countries, as well as international organisations and non-governmental organisations, to endorse the following recommendations in their legislation, social and educational policies, aid programmes, and bilateral and multilateral co-operation initiatives.

**WE, the participants in the International Conference on Bride Price further recommend that:**

The Kampala Declaration on Bride Price is officially presented to the Secretary General of the United Nations and the presidents of the African Union and the European Union, as well as the Secretary General of the league of Arab States and the Organisation of Islamic Countries, the Head of Vatican, the Head of the Church of England, the Heads of all Pentecostal churches and other faith-based groups.

**We agree to hold a follow-up meeting to be convened on the African continent in a year's time, to review progress achieved towards the implementation of the Kampala Declaration.**

The Kampala Declaration has been adopted by the participants from the following countries: Ghana, Kenya, Malawi, Nigeria, Republic of South Africa, Rwanda, Senegal, Tanzania, Uganda, Germany, India, UK, USA.

## **Appendix 4 Call for papers on Bride Price**

### ***International Conference on Bride Price and Development*** **February 2004, Kampala, Uganda**

The institution of bride price, dowry and other related marriage gifts constitute some of the major harmful traditional practices that contribute to the subordinate status of women, undermining their rights and the rights of their families, and communities, leading to a greater tolerance of gender violence and contributing to violent conflict, HIV/AIDS, poverty and disability.

Although the institution of bride price in Africa has far-reaching, health, economic, social and, human rights and legal implications in the countries where it is practiced, there is much silence in the way of bringing it to the forefront of public debate both as an issue whose values constitute a direct violation of human dignity and freedom, and whose social practice is a hindrance to the enjoyment of human rights.

This conference will bring together experts in the fields of harmful socio-cultural practices which contribute to gender violence and inequality, experts on reproductive health and rights, activists on the rights of women and children, politicians and other stakeholders from Governments, intergovernmental agencies, academia, the media, civil society organisations and educationists.

The purpose is to develop a programme of action to reduce or remove the significance of bride price as a factor contributing to violence and gender inequality, hindering the improvement in the quality of life of families and the realisation of the rights of children in the countries where it is practiced.

#### **CONFERENCE THEMES**

##### **Main Theme**

Coalition and action to safeguard the child and the family:  
The Kampala declaration on bride price and development.

##### **Sub Themes**

Innovations around the world on harmful socio-cultural practices

##### **Bride price and socio-economic development**

##### **Bride price and the protection of children from neglect violence and abuse**

Bride price, sexual and reproductive health and rights / STI/HIV/AIDS

##### **Bride price and gender violence**

Men, masculinities and gender violence

##### **Human rights/Legal/Strengthening Strategic Institutions**



## **CALL FOR PAPERS**

Applicants wishing to submit a paper under one of the sub-themes for the above conference should forward a 100 – 150 words synopsis by December 15<sup>th</sup> 2003 to:

The Conference Administrator  
MIFUMI  
Po Box 274  
Tororo  
Uganda

The Conference Administrator  
PROMPT UK  
BRUNSWICK COURT  
BRUNSWICK SQUIRE  
BRISTOL, BS2 8PE, ENGLAND

Email: [Mifumi@mifumi.org](mailto:Mifumi@mifumi.org)  
Tel:00256 77 781122/23  
Fax:

[prompt@mifumi.org](mailto:prompt@mifumi.org)  
0044 117 923 2035  
0044 117 916 6451

VISIT OUR WEBSITE AT [www.mifumi.org](http://www.mifumi.org)

## **FEEL FREE NETWORK MEMBERS**

Members of the Domestic Violence and Bride Price Feel Free Network wishing to attend should contact the Conference Administrator indicating how they will contribute to the conference.