American Journal of Humanities and Social Sciences Research (AJHSSR)
e-ISSN : 2378-703X
Volume-4, Issue-12, pp-268-279
www.ajhssr.com
Research Paper Open Access

CAMEROONIAN INTERNATIONAL PUBLIC POLICY AT THE SERVICE OF THE PRINCIPLE OF EQUALITY IN FAMILY LAW

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ABSTRACT: In the current challenge of the globalisation with flows of people, the approach to family law through the prism of the principle of equality is giving rise to a new family order, which aims to bring States together around common values. In terms of international conflicts of laws, the mechanism of international public policy finds in these values a new universal, transnational foundation, which systematises its intervention whenever equality is violated. Cameroonian family law, not being in rest of its mutations, will be likely to experience reinforcement in the original function of Cameroonian international public policy, which is becoming an instrument for the protection of universal values.

Keywords: *International public policy, equality, family, forum, international law disputes.*

I. INTRODUCTION

Debates on family law in Africa no longer take place in terms of tradition and modernity. If this consideration was fundamental in the aftermath of independence, today, on the other hand, the reforms of family legislation can be analysed under the sign of a new paradigm (LEKEBE, 2016: 123), which is the internationalisation of law based on the principles of the defence of fundamental Human Rights. Contemporary family law, like all personal law, is dominated by the fight against discrimination: any difference in treatment must be screened against fundamental rights. The dominant ideas of the new Family Codes in Francophone African states are, among others, the advancement of the principles of freedom and equality, the decline of the family as a group and the emergence of the individual (LEKEBE, 2016: 133). The rise of the principle of equality takes shape through its proclamation in international texts such as the Declaration of human rights and citizen Citizen of 1789, which states that "All men are equal in rights. The law must be the same for all, whether it protects or punishes. All citizens being equal, are equally eligible for all public dignities, places and jobs, according to their capacity and without any other distinction than that of their virtues and talents"[1]. This was followed by its appropriation by internal texts, following the example of the Cameroonian Constitution which expressly prohibits in its preamble any discrimination based on race, religion, beliefs and sex. Equality can be understood as "A principle according to which all individuals have, without distinction of person, race or birth, religion, class or wealth and sex, the same legal vocation to the regimes, duties and rights that the law establishes" (CORNU, 2009: 347). It can also be understood as the absence of any form of discrimination between individuals[2]. It is the latter aspect, however, which includes family law, whose provisions of the 1804 Civil Code, adopted by Cameroon since the colonial period, reveal discriminatory distinctions according to range of birth and sex.

[1] The same provision was taken up by the 1948 Universal Declaration of Human Rights in its Section 1, the European Convention on Human Rights in its Section 5, and the African Charter on Human and Peoples' Rights in its Section 3.
[2] As provided for in Section 1 of the Universal Declaration of Human Rights.

By integrating the international conventions for the protection of women and children such as the CEDAW[3], the Maputo Protocol[4], the CRC[5] and the ACRWC[6], the Cameroonian legislator, like most of its African counterparts[7], has sought to eliminate this discrimination by enshrining marital parity and equality of filiations in the new[8] family organisation texts. The principle of equality is going to change the family order, formerly based on the principle of hierarchy within the family group, to equality between its different members.

However, with the free movement of persons, goods and services, family relations are becoming increasingly international (DJUIDJE, 2009: 82), through mixed marriages, children born to parents of several nationalities or assets located in several States. The resolution of international conflicts using the conflictualist method will then undergo major changes in private international law with the principle of equality. Indeed, the integration of universal values in family law has not only had the effect of creating a new family order, it also brings another orientation to the mechanism of international public policy in the context of private international relations. Defined according to Francescakis (1964: 309) as "the reflection for a given State of a certain number of fundamental principles which, whether or not expressly enshrined in its positive law, intervene to exclude the application of a foreign law considered normally applicable", international public policy, in its original function, aims to safeguard the national values of the legal order seized. It is this nationalist character which has long been a distinctive feature, in as much as each legal system has fundamental values which cannot be flouted in the name of international harmony. Despite its legislative deficiency and a case law with a *lexforistic* tendency (DIFFO, 2011: 9; EPOTO, 2014), Cameroonian private international law has nevertheless appropriated the mechanism of international public policy in order to protect itself from foreign values that are likely to violate its fundamental values[9]. However, under the prism of equality, States increasingly share common values, especially in the family sphere, which is likely to change in passing the function formerly assigned to the mechanism of international public policy. Our concern is therefore to know how Cameroon's international public order changes with the consecration of equality in family law? Universalism or conservatism?

In view of the changes in family law resulting from the incorporation of the principle of equality, the mechanism of international public policy has not remained indifferent, giving rise to a new so-called objective public policy, the function of which is to reinforce the obligation to respect an imperative principle of universal order. The trend towards objectification (CADET, 2005) of public policy aims first and foremost to bring the different legal orders together around the common values of protection of the human person. Its intervention will be the same everywhere, regardless of the legal system in question. Moreover, with objectification, public policy will only be able to produce its radical effect, given that the protection relates to a universal value. Since the Cameroonian legal system has integrated equality in all family spheres, Cameroonian public policy then presents elements of

[3] The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) entered into force on 3 September 1981 after ratification by 20 countries. The spirit of the Convention is inspired by the fundamental principles of the United Nations which proclaim the equality of rights between men and women, analysing in detail the meaning of the notion of equality and the means to achieve it. The Convention, in addition to being an international declaration of women's rights, also sets out a programme of action for States Parties to guarantee the enjoyment of these rights.

[4] The Protocol is the regional legal instrument adopted by the African Union, under the leadership of the African Commission on Human and Peoples' Rights, on 11 July 2003 in Maputo, Mozambique, and entered into force on 25 November 2005. The Maputo Protocol aligns itself with the domestic law of each State Party to reaffirm women's traditional civil, economic, social and cultural rights. Its objective is the elimination of gender inequalities in family management, the institutionalisation of parity in the political sphere for greater involvement of women in the decision-making process and in the elaboration and implementation of development programmes. The Maputo Protocol also lays down norms protecting women against forms of physical and psychological violence in times of peace as well as in times of armed conflict.

[5] International Convention on the Rights of the Child, which entered into force on 2 September 1990. It is the first international instrument that defines the child and describes in detail the individual rights of the child to develop to the best of his or her ability, without suffering from hunger, poverty, neglect, exploitation or other injustices.

[6] The African Charter on the Rights and Welfare of the Child, adopted in July 1990 in Addis Ababa, Ethiopia at the Conference of Heads of State and Government of the Organization of African Unity (OAU). It entered into force on 21 November 1999. The ACBED is an essentially African international instrument, which broadly takes up the principles laid down by the CRC, whose application on African soil it reaffirms.

[7] These are the legislators who have adopted the new Family Codes which integrate equality in the whole family sphere, as in Benin, Togo, Burkina Faso, to name but a few.

[8] These are the Preliminary Draft of the Cameroonian Code of Persons and the Family and the Preliminary Draft of Civil Code.

[9] Section 12 (5) of the Preliminary Draft of the Cameroonian Code of Persons and the Family which provides that: "National law shall substitute foreign law where Cameroonian public policy is concerned".

its objectification. With a view to remedying the various forms of discrimination maintained within the family group, Cameroonian international public policy thus reinforces conjugal parity and equality of filiations undertaken by the new texts, by ousting laws that have maintained unequal treatment between its members.

I. A BROAD REINFORCEMENT OF EQUALITY IN MARRIAGE BY CAMEROON'S INTERNATIONAL PUBLIC ORDER

The equality proclaimed[10] in marriage is what has modernised family law, once based on the bond of powerful hierarchy in favour of the father of the family, master of his wife and children. The struggle for equality between men and women has conquered a very wide domain in marriage, encompassing both the personal relationship and the property relationship of the spouses. In the context of a marriage of an international character, the preservation of equality between husband and wife becomes the basis for the intervention of international public policy with regard to legislation that maintains gender treatment between the spouses.

1.1. The intervention of international public policy for violation of equality in the personal relationship of marriage

Already with the provisions of the Civil Code of 1804 and Order No. 81/02 of 29 June 1981 on the organisation of civil status and various provisions relating to the status of natural persons, equality in the extra-patrimonial sphere was already perceptible, but its adjustments are more extensive today with the drafting of the family law reform texts. From the life to the dissolution of marriage, equality has been established in those aspects that reflect a gender difference. The provisions devoted to this effect will include the international public policy exception in the event of a violation due to the application of foreign law.

1.1.1. Equality established in the life of the marriage

The formation of marriage is characterised by several physiological and social conditions that the spouses must fulfil in order to enter into marriage. As far as the physiological or personal conditions of the spouses are concerned, the marriageable age is one of the old discriminations maintained between men and women as provided for in Section 144 of the Civil Code, which set the age of marriage at 18 years for boys and 15 years for girls. While it is true that this age difference according to sex is generally linked to puberty and the procreative function of marriage, it does not guarantee respect for the rights of the child, since legally the young girl is a child until the age of 18[11]. This difference in the marital age between the two sexes was then historically based on the difference in the biological development of adolescents, but also on the distinction in the roles assigned to men and women. However, such a provision soon proved to be out of step with the evolution of today's society. Today, boys and girls have equal access to many areas of social, political and economic life. For this reason, it seemed essential to raise the marriageable age of girls to 18 years, in accordance with the provisions of Section 6 (b) of the Maputo Protocol or Section 21 of the ACRWC, which states that: "Child marriages and the promise of marriage by girls and boys shall be prohibited and effective measures, including legislation, shall be taken to specify that the minimum age for marriage is 18 years and to make the registration of all marriages compulsory".

Section 210 of the Preliminary of the Cameroonian Code of Persons and the Family provides to this effect that: "Man and woman before the age of eighteen years may not contract marriage, except (...)". The same provision is also provided for in Section 144 of the French Civil Code; just as the Togolese Code sets the marriageable age for girls and boys at 18. This development has even conquered Muslim law, based on religious ethics which advocates the submission of women through their duty of obedience. The new Moroccan[12] Moudawana puts women and men on an equal footing with regard to the age required for

[10] Section 16(1) of CEDAW recognises the equal rights and responsibilities of men and women on the basis of equality in all matters arising out of marriage and family relations during marriage and at its dissolution. Article 6 of the Maputo Protocol recommends that States Parties ensure that men and women enjoy rights and are considered equal partners in marriage.

[11] This is reaffirmed by the CADBEE through the prohibition of child marriages and the promise of young girls and boys in marriage.

[12] By Law No. 70/03, BO No. 5184 of February 5th 2004, p. 417, Morocco adopted a new Family Code replacing the former Moudawana of 1957. This Code reflects Morocco's determined political will to embark on the path of democracy, modernity and the aspiration of Moroccan men and women for profound changes in society.

marriage. It requires, in its article 19, a minimum age of 18 years for both sexes. Where the question of age at marriage is at the centre of an international conflict of laws, the determination of the applicable law is, as an element of personal status, a matter for the national law of the parties[13]. It is the designated law that will be susceptible to international public policy when its application in the legal order seized of the matter conflicts with equality as regards the age at marriage. Even as there is no unanimity on the age group for marriage, which remains a national value, its unequal nature becomes a main cause of intervention by international public policy between legislation on equal and unequal age groups. By this provision of the Preliminary Draft Code, Cameroonian public policy shall, moreover, oppose early marriages of prepubescent minors.

As for the life of marriage, it is characterised by the personal duties that the spouses have towards each other. Indeed, the 1804 Civil Code already affirmed the equality of the spouses in their reciprocal relationships. It laid down the principle according to which the spouses contract together by the sole fact of marriage, the obligation to feed, maintain and bring up their children[14]. They owe each other fidelity and assistance[15]. However, certain aspects of the execution of these duties discriminate against women. These include the duty of cohabitation, or more precisely the choice of the family residence and the punishment for breach of the duty of fidelity or the treatment of adultery. Marriage imposes a community of life on the spouses. It implies a community of bed, roof and table for them. More concretely, the spouses must have a common dwelling, i.e. the place where they physically live. To this end, Article 215 of the Civil Code is discriminatory in that it provides that: "The choice of the family's residence belongs to the husband; the wife is obliged to live with him and he is obliged to receive her". It is then up to the husband, as head of the family[16], to choose the family residence and the wife is obliged to live with him. The obligation of cohabitation in reality weighs only on the woman (TIMTCHUENG, 2000: 61).

In order to put an end to this discrimination condemned by the international treaty provisions protecting women[17], the Cameroonian legislator will follow the example of its Beninese[18] and Burkinabe[19] counterparts by opting for a joint choice, in concert with both spouses, of the marital home. Thus, Article 270, paragraph 1 of the Preliminary Draft of the Code provides that the spouses choose their residence in[20] concert. This is what some Cameroonian judges are already adopting domestically[21]. However, not all legislations, despite the integration of the principle of equality, have made the choice of the family residence a manifestation of equality, leaving the husband's monopoly[22] to subsist. When the question of the choice of family domicile arises in the context of an international dispute, the determination of the applicable law depends in Cameroonian law on the conflict rule of

[13] Section 3(3) of the Civil Code.
[14] Section 203 of the Civil Code.
[15] Section 212 of the Civil Code.
[16] Section 213 of the Civil Code: "The husband is the head of the family. He exercises this function in the common interest of the household and the children".
[17] Section 15 (1) and (4) of the CEDAW provides with regard to the choice of marital domicile that "States Parties shall accord to women equality with men before the law and the same rights with regard to the law relating to the right of persons to liberty of movement and freedom to choose their residence and domicile". And Section 6(e) of the Maputo Protocol also provides that both spouses shall choose, by mutual agreement, their matrimonial regime and place of residence.
[18] Section 156 of the Beninese code also provides that "the choice of domicile, of the household is the responsibility of the spouses"; article 124 of the Burundi Family Code is more explicit by providing that "the conjugal residence is at the place chosen by mutual agreement between the spouses".
[19] Section 294 of the Code of Persons and the Family of Burkina Faso which provides that: "the residence of the family is the place chosen by mutual agreement".
[20] It is deplorable to note that, contrary to the 2010 version cited above, the latest 2012 version of the Draft Cameroonian Code of Persons and the Family, in Article 236 al.3, reproduces the former discriminatory provisions which granted the husband the monopoly on the choice of the family residence.
[21] TPI of Yaoundé/ C.A., Order n°457/C of 14 March 2005, unpublished. In this case of the NGOA spouses, the judge admits that from now on, the husband no longer has the monopoly on the choice of the family residence, that the wife can also do so and even decide to live elsewhere when she is abused by her husband. In this case, in February 2005, Mrs SOLO Mireille, married to Mr NGOA Kisito, left the marital home following the physical violence exercised on her person by her husband. She applied to the interim relief judge for custody of the couple's two children. In his defence, Mr. NGOA states that the marital home of a married woman is the one chosen by her husband as head of the family and that his wife is in a situation of abandonment of the marital home and therefore obliges her to live with him. In response to her husband's arguments, Lady SOLO asked the court to apply to her the provisions of the CEDAW which establish the principle of non-discrimination on the basis of sex in order to remove from the proceedings the domestic laws on which her husband relies to win his case. The judge did so by applying the provisions of CEDAW.
[22] Section 335 of the Malian Family Code.

Section 17 of the Preliminary Draft Code, which provides that: "The extra patrimonial effects of marriage are governed by the national law of the spouses, and in the case of different nationalities, by the law of the country where they have their common domicile or, failing that, by the law of the court seized"[23]. The law thus designated may therefore be overridden by Cameroonian public policy when its application in the Cameroonian *forum* is contrary to the equality of the spouses in the choice of family residence. This could be illustrated by the application in Cameroon of Malian law, which reserves the choice of domicile to the husband.

1.1.2. Equality established at the dissolution of the marriage

A marriage validly sealed ends, either by the death of one of the spouses or by a judicial pronouncement of divorce. Death appears as an accidental dissolution of the marriage which requires the surviving spouse to observe a certain behaviour as provided for by law or, in the case of dualist countries, by custom. As far as divorce is concerned, equality was already perceptible at the level of causes with the Civil Code of 1804. The husband as well as the wife could ask for divorce on the grounds of adultery[24] or in case of condemnation of the spouse to an afflictive and infamous punishment[25]. But the punishment for breach of the duty of fidelity or adultery was clearly discriminatory against women. Under the old Cameroonian Penal Code, the constitution of the offence of adultery varied according to the sex of the spouse. However, this inequality had its basis in traditions that maintained extreme rigour on the adultery of women, given that it exposed the family to serious difficulties, including confusion of parts with regard to the children, shame and dishonour of the family. Not forgetting that this is most often seen as evidence of the man's inability to satisfy his wife (TCHAMWOCK-DEUFFI, 2018: 392).

According to Section 361 of this Code: "(1) A married woman who has sexual relations with a person other than her husband shall be punished by imprisonment for two to six months or a fine of between 25,000 and 100,000CFA francs. (2) A husband who, in the marital home, has sexual intercourse with a woman other than his wife or wives, or who, outside the marital home, has habitual sexual intercourse with another woman, shall be punished by the same penalties". From this provision, the offence of adultery could only be constituted against the man in two cases: when he had sexual relations with another woman in the conjugal home, even if it was the first time. Or when he had sexual relations with another woman outside the marital home on a regular basis. In the latter case, the guilty act had to be committed repeatedly with the same woman. As one author has pointed out, "as long as the husband's adultery takes place outside the marital home, is of a punctual and passing nature, or at least when it is not discovered at least twice with the same mistress, it cannot be condemned" (FOKO, 1999: 69). The husband could therefore legitimately have sexual relations with other women without committing adultery. For the wife, however, the text did not specify anything about the constitution of the offence of adultery, so it could be deduced that a woman's adultery is established anywhere by sexual contact alone[26]. However, some legislations were very strict with regard to women by repressing adultery of men and women[27]differently.

In view of the struggle for equality undertaken by the International Conventions for the Protection of Women, which strongly condemn the unequal treatment of the offence of adultery, the Cameroonian legislator has been keen to eliminate all discrimination in the constitution of the offence of adultery by retaining the same constituent elements of adultery for both husband and wife (DJUIDJE, 2019: 65). Indeed, article 361, paragraph 1 of the new Penal Code provides that: "Any person who, being married, has sexual relations with a person other than his or her spouse shall be punished by imprisonment for between two (2) and six (6) months or a fine of between twenty-five thousand (25,000) and one hundred thousand (100,000) francs". With this provision, Cameroonian

[23] Section 1024 of the Family Code of Burkina Faso.

[24] Adultery, be it physical, carnal or intellectual, is a violation of the duty of fidelity and sections 229 and 230 of the Civil Code provide that either spouse may request a divorce on the grounds of the other's adultery.

[25] According to Section 231 of the Civil Code, "the condemnation of one of the spouses to an afflictive and infamous punishment will be a cause of divorce for the other".

[26] Some traditions were strict with regard to women, treating a raped married woman as an adulterer.

[27] Indeed, Sections 337 and 339 of the Beninese Penal Code organise the repression of the crime of adultery differently. A woman convicted of adultery is liable to a custodial sentence. She can be sentenced to a prison term of between three months and two years. Furthermore, Article 337 of the same Code provides in paragraph 2 that: "in the case of adultery, as provided for in Article 334, the murder committed by the husband against the wife, as well as his accomplice at the moment he catches them in flagrante delicto in the conjugal home, is excusable". The murder thus committed by the husband on the wife in the event of adultery is therefore excusable. By this provision, the husband had the right to kill for adultery. However, for the husband, the punishment for the offence of adultery was limited to the payment of a fine as provided for in Article 339 of the Beninese Criminal Code.

law joins other Codes that preceded it, notably the Burkinabe[28] and Senegalese Penal Codes.[29] Despite this move towards the equal treatment of spouses within the family, some legislations have not deemed it appropriate, in the name of religious values, to change the unequal regime for the repression of adultery.

When adultery is at the centre of an international dispute, the applicable law is *governed* by the conflict rule of Article 18 of the Preliminary Draft Code, which provides that: "Divorce or legal separation shall be governed by national law, where it is common to them and, in the case of different nationalities, by the law where they have their common domicile at the time of the submission of the petition for divorce or legal separation. In the absence of proof of the existence of a common domicile, the different modalities, the determination of the causes and effects of the divorce or separation shall be subject to the law of the court seized". The exception of international public policy will intervene when the application of the law thus designated in the Cameroonian legal system undermines the egalitarian nature of the repression of adultery. This will be the case in the legislation of Muslim States, for which women accused of adultery are liable to stoning. However, this is not the case for men[30].

As the concern of the new family law texts is to rectify inequalities between spouses, Cameroonian public policy will further strengthen this equality in the patrimonial framework of marriage.

1.2. The intervention of the Cameroonian international public policy for violation of equality in the patrimonial relationship of spouses

The patrimonial relationship between spouses is the field of the distribution of powers granted to each in the management of the family patrimony. Within this framework, the husband as head of the family has predominant powers over those of the wife. In traditional society, men arrogate to themselves a power of domination over women in return for the protection they provide (ATANGANA-MALONGUE, 2006: 839). With regard to the conventional provisions for the protection of women's rights, which condemn the unfavourable position of women in the management of property, Cameroonian prospective law has sought to put an end to this discrimination by establishing joint management of marital property followed by the revaluation of the rights of the surviving spouse. The mechanism of international public policy will then ensure, in the framework of the resolution of international conflicts, the respect of this new egalitarian status of men and women in the management of marital property, through the eviction of any law to the contrary.

1.2.1. Joint management of marital property

It is the abolition of the hierarchy between spouses that is the basis for the joint management of spouses. Formerly, placed in a position of total dependence on the husband, the wife had no power over the management of household assets. Her legal incapacity was such that all her actions were subject to the husband's authorisation. The inequality a woman could complain about was not inequality on the grounds of sex but on the grounds of marriage. It was enough for a woman not to marry to be civilly equal with the man and she would regain equality through widowhood and divorce. However, from the Middle Ages onwards, the status of women became more flexible, which called into question their legal incapacity. This is the case with the French law of 18 February 1938, which removed the legal incapacity of women and recognised their full capacity. By this capacity, the woman had a monopoly on the exercise of the domestic mandate. Later, she acquired her financial autonomy by exercising a profession separate from that of her husband, but the husband had the power to oppose the exercise of this profession when his opposition was justified by the family interest[31]. It was France, through the law of 23 December 1985 on matrimonial regimes, which put an end to the last sexist bastions of the 1804 Civil Code (BENABENT, 1996: 136). In effect, by modifying the rules governing the operation of the legal regime of

[28] Section 418.
[29] Section 330.
[30] In the high-profile case of AMINA LAWAN in Nigeria, she had been prosecuted for adultery and the penalty reserved for her was the death penalty which is applied to anyone accused of adultery. Had it not been for the intervention of the international community which had forced the Nigerian state applying Sharia law to cease all proceedings against her, she would have been stoned to death. By recommending that women remain faithful to their husbands in Section 36 of the Family Code, the Moroccan legislator, like most codes of Muslim law, has enshrined this obligation expressly for women and for them alone. Reciprocity is meaningless since nowhere does the duty of fidelity of the husband to his wife appear, since polygamy is allowed.
[31] Section 223 of the Civil Code.

the community, this law enshrines that the wife now has the same powers as the husband over joint property. In accordance with the conventional provisions for the protection of women, the management of the marital home is no longer focused on the husband, but organised around the man and the woman. This is what we can detect in the Preliminary Draft of the Cameroonian Civil Code, which also brings as an innovation the restoration of marital parity in property matters. Section 825 of this Preliminary Draft Code grants spouses the same powers to manage the community's property. This is in line with the African Codes that preceded it, such as those of Benin[32], Togo[33] and Burkina Faso.

The international conflict that may then arise with regard to the management of marital property is subject to the conflict rule of Article 17 of the above-mentioned Preliminary Draft Code, which governs the effects of marriage. The law thus designated in the Cameroonian legal system may however be deemed contrary to international public policy, for violation of equality, because it retains an unequal regime for the management of marital property. This will be the *case for the* application in the Cameroonian *forum of* Malian law which maintains the husband as the lord and master of the community[34].

1.2.2. Establishing the inheritance devolution of the surviving spouse

Of all the successors, the surviving spouse is the "poor relation" of the estate, especially in the case of a widow. When the husband dies, the widow is left with almost nothing, sometimes even deprived of the marital home with her children. Although customary practices are largely responsible for the widow's unfavourable condition, the Civil Code does not bring much change to her. By prescribing that the surviving spouse was only entitled to usufruct and could only inherit in full ownership in the absence of inheriting parents, it merely reiterated this discrimination and implicitly recalled that the woman is not entitled to inherit in priority rank.

In application of the international treaty provisions for the protection of women, which condemn the unfavourable situation of widows in the succession of their spouse[35], the Cameroonian legislator will follow in the footsteps of its predecessors, by restoring the widow's situation for an equitable treatment compared to that of the widower. Equality in the devolution of inheritance innovates here on two points: the surviving spouse now has the vocation of inheritance.

If in the past the surviving spouse, especially the widow, was considered as a foreigner and therefore excluded from the estate of her predeceased spouse, the new family law texts give her the right to inherit the deceased's property. Section 543 of the Preliminary Draft Cameroonian Code provides to this effect that: "the succession of the deceased, in the absence of a will, shall be transferred to his surviving spouse, his descendants, ascendants and collaterals in accordance with the provisions of this Code"[36]. The Beninese Family Code goes further by making the surviving spouse a reserved heir[37]. In fact, Article 811 provides that: "the children, the surviving spouse, the father and mother of the deceased are heirs with the right of reservation when they come to the succession. The descendants of the children are likewise entitled to a reservation, but they are counted only for the child from whom they are descended. If they come to the succession of their chief, this reserve will be shared equally among them". By these provisions, the widow's legal status in the succession of her deceased husband changes from usufructuary to successor. This automatically entitles her to a share of the estate. The latter is established in Sections 545 to 549 of the Preliminary Draft Cameroonian Code as follows: the surviving spouse is entitled to a quarter of the estate in the presence of the descendants[38] and half of the estate in the presence of the ascendants and

[32] Section 179 et seq. of the Beninese Family Code.
[33] Section 53 et seq. of the Togolese Family Code.
[34] Section 315 of the Malian Family Code.
[35] Section 21 of the Maputo Protocol: "A widow shall have the right to an equitable share in the inheritance of the property of her spouse. The widow has the right, irrespective of the matrimonial regime, to continue to live in the marital home. In the event of remarriage, she retains this right if the home belongs to her personally or has been devolved to her by inheritance".
[36] Section 723 of the Family Code of Burkina Faso has also provided that: "Inheritances are deferred to the children and descendants of the deceased, his ascendants, collateral parents and surviving spouse....".
[37] The Burkinabe Family Code has also made the surviving spouse a reserved heir under Section 862.
[38] Section 630 of the Family Code of Benin; Section 742 of the Family Code of Burkina Faso; Section 431 of the Family Code of Togo.

collaterals[39]. In the absence of relatives who are entitled to inherit, the estate shall devolve in full to the surviving[40] spouse.

Despite the evolution towards more equality between men and women in the family, some legislations, even with the reform of their family law, keep the widow in her position of usufructuary. When the devolution of the estate of the surviving spouse arises in the context of an international dispute, the determination of the applicable law according to the Cameroonian rule of conflict of laws, submits the law governing the succession, in particular the national law of the deceased[41]. This law, which is called upon to settle the dispute on the merits, may be subject to an exception of international public policy when its application in the Cameroonian *forum* is deemed discriminatory and unequal in view of the widow's new status.

This quest for the respect of the principle of equality through the implementation of the Cameroonian international public policy exception is reinforced in matters of filiations.

II. THE FILIATION'S PROGRESSIVE REINFORCEMENT OF EQUALITY BY THE CAMEROONIAN INTERNATIONAL PUBLIC POLICY

Marked by the filiations hierarchy principle which has ever since existed in almost all the legal systems, under the umbrella of the 1804 Civil Code, the story behind the law on affiliation has turned into a continuous release (LEKEBE, 2016: 134), through the administration of the child's condition of which some could not be affiliated to their parents due to some social considerations[42]. But the declaration of fundamental rights in family law in general and in filiation's law in particular orchestrated the removal of the filiation's hierarchy principle. Discrimination depending on the source of the child's filiations are then no more authorized be it with his dealings with other children or with his dealings with his father and mother. In the framework of conflicts of international private law, the international public policy mechanism finds a preferred ground for its intervention for violation of a fundamental right as raised by the French case law[43]. The intervention of the Cameroonian public policy mechanism will then allow the reinforcement of equality evidenced by the acknowledgement of the same right for all children and the joint exercise of parental authority.

1.1 The intervention of international public policy for violation of equality as to the rights for all children

The affiliation link traditionally describes the state of three types of children namely the legitimate child who is born in a lawful wedlock; the illegitimate child who, contrarily to the first is born out of a wedlock from unmarried parents; and the adopted child, as the result of an emotional and legal link between a third party and the child. But given that the latter enjoys the same status as the legitimate child, the focus will be on the illegitimate and legitimate child. Under the influence of the Christian doctrine, the legitimate child benefited alone and for a long period of time of a favourable status meanwhile the illegitimate one was considered as inferior. With the consecration of the equality principle in the family environment, the status of the illegitimate child sees a new turn which places him at the same level with legitimate one. This is what comes out of the Preliminary Draft of the Cameroonian Code of Persons and the Family which provides in clear terms in its section 282 that: "The rights of the acknowledged illegitimate child are equal to those of the legitimate one". Section 334 of the French Civil Code is then more explicit in the acknowledgement of the equality of rights between the illegitimate and legitimate child providing that: "The illegitimate child has in general the same rights and obligations as the legitimate one towards his father and mother"[44] Following this, the illegitimate child has thus the same personal and inheritance rights as the legitimate one.

1.1.1 Equality introduced in the child's personal rights

Among the personal rights resulting from the affiliation link existing between a child and his parents, the maintenance obligation that which indicates a discrimination with the Civil Code provisions given that it

[39] Section 633 of the Beninese Family Code; Section 743 of the Family Code of Burkina Faso; Section 432 of the Family Code of Togo.
[40] Section 634 of the Beninese Family Code; Section 744 of the Family Code of Burkina Faso; Section 433 of the Family Code of Togo.
[41] This is an extension of Section 19 of the Preliminary Draft of the Cameroonian Code which only governs the devolution of property in the context of testamentary succession.
[42] Children born out of wedlock were facing contempt due to their birth circumstances, mostly adulterous ones and those born out of an incestuous relationship. In France, following the old regime, illegitimate children were excluded from public services. They could be neither judges nor priests if they still had a link with their family or with the one who decided to acknowledge him/her. They could not inherit. Despite being recognised, the illegitimate child was permitted to seek for his father in order be entitled to maintenance.
[43] In a law case of acknowledgement of an illegitimate child, the judges decided that: "the Algerian law which deprives a child on the ground that he was born out of wedlock, of any right to establish his affiliation is fundamentally contrary to the French modern conception of children's rights", Paris High Court, 23rd April 1979, *RCDIP* 1980, p. 83, note P. Lagarde.
[44] This is so the case in section 236 in the family code of Burkina Faso "children enjoy equal rights with no exception neither distinction nor discrimination based on the source of affiliation".

was only intended in the marriage context. Section 203 provides that "the wedlock created the legitimate family. The spouses by their marriage incur the obligation to feed, take care, raise and train up their children. Relating to the illegitimate child, this obligation could not be inferred from the exercise of a claim for maintenance towards the defaulting father including the situation of a prohibited affiliation acknowledgement[45]. Yet, the incorporation of the international conventional provisions relating to the protection of the children's right, which recommend to the member states, an equal treatment for all children with no distinction as to the affiliation nature, most of the black francophone African legislations will render the maintenance obligation a right for all children. Considering the illegitimate child as the legitimate one, on the aspect of the right of maintenance means consequently that there exists therefore between his parents and him a reciprocal obligation similar to that which exists between the legitimate child and his parents.

To this effect we call section 392 of the Code which provides clearly that "The illegitimate children whose affiliation is regularly established have towards their author the same maintenance right and obligations as the legitimate children". The Cameroonian legislator, not been outdone of the assimilationist tendencies, also plans in section 322 of his Preliminary Draft of the Code of Persons and the Family that "The illegitimate child whose affiliation is regularly established and the adopted one have towards their parents the same maintenance obligation as the legitimate child". It is then obvious that the desired objective is the real uptake of the illegitimate child as the legitimate one. But the impediment caused by the lack of marital unity makes that obligation incumbent most at times on the parent who acknowledged the child. Whereas, when he is acknowledged by both parents as in the case with the legitimate child, the obligation is incumbent on both.

When the conflict of laws rises on the maintenance obligation of the parents, the applicable law depends on the nature of the affiliation. In the case of a legitimate affiliation, the governing law is that of the effects of marriage[46], which will be applied; whereas in the case of the illegitimate affiliation, the law of the mother will govern if the father has not acknowledged the child or it will be the law of the latter if he acknowledges him. With regards to this new status of the illegitimate child, the laws which are hostile to all the rights he benefits even that of maintenance will be likely to set off a Cameroonian international public policy exception as to the violation of the affiliation equality. It will be so of the Moroccan law where the natural affiliation termed as illegitimate, produces no effects of the legitimate affiliation towards the father. The child has no right on his and the father no obligation towards the child[47]. It is following this that the French Court of Cassation, in a judgement of October 14th 2009, considered that "the right of maintenance is a right incurred by the father and mother who cannot forfeit it and that, a court of appeal has soundly rejected as contrary to the French international public policy, the provision of the Moroccan judgement by which, the mother undertakes the care of her daughter while the common child and the parents have their residence in France..."[48]. The assimilation to the same rights seeking an equal treatment for all children is also noticeable in inheritance rights.

1.1.2. Equality introduced in the inheritance rights of children

Inheritance rights have been the apparent domain of the discriminatory treatment between the illegitimate child and the legitimate one. This discrimination has expanded on many domains of the children testamentary dispositions. The inheritance rights of the illegitimate child in his father and mother's heritage do exist only if his affiliation is established. Children whose affiliation is prohibited are hereby excluded. Even when the affiliation is established, the inheritance rights of the illegitimate child are limited compared to those of the legitimate one. In front of a legitimate child, the inheritance rights of an illegitimate child are half those of the former in their father's succession[49].

The treatment of inequalities was still apparent by the fact that the legitimate child is the one to receive all from the succession if he is the lone descendant (NDOKO, 1990: 30). Yet the illegitimate child in the same situation shares the heritage with the ascendants and the preferential collaterals in the portion of ¾ for the first one and ¼ for the second ones[50]. The law excludes any reciprocal right of succession between illegitimate and legitimate collateral. It stipulates that if the deceased is an illegitimate child, his succession can only be set in dispute by his parents who acknowledged him and his illegitimate brothers and sisters[51]. The discriminations go along when by virtue of section 908 of the Civil Code, the illegitimate child can't receive anything by gifts

[45] Section 762 of the Civil Code provides to this effect that "the provisions (…) are not applicable to adulterous children or those born out of an incestuous relationship, the legislation only grant them the right to maintenance".
[46] Section 17 of the Preliminary Draft of the Code of Persons and the Family.
[47] Despite this radical stand of the Moroccan law, a judgement administered by the Tanger family court, on the 30th January 2017, has accepted the filiations of a child born out of wedlock and condemned by the biological father to pay the mother a compensation. This is a precedent in Morocco, which has attacked a constant case law strongly imbued of Muslim law. Sure, the judgement does not establish the paternal and can be quashed on appeal, but it testifies on the influence of new values in the interpretation by the filiation's law judge.
[48] Cass. civ. 1re, 14th October 2009, *RCDIP*, 2010, p. 361, note N. Joubert.
[49] Section 758 of the Civil Code.
[50] Section 759 of the Civil Code.
[51] Section 766 of the Civil Code.

inter-vivos beyond what has been granted to him under succession. Furthermore, section 913 (2) of the Civil Code points out that the acknowledged illegitimate child is entitled to a provision which is a share from what he would have had, had he been legitimate, evaluated taking into consideration the portion that exists between that granted to the illegitimate child in case of succession *ab intestate* and that he would have had, had he been legitimate; without omitting that the illegitimate child could neither inherit from his/her grand-parents nor even receive a donation or gift from them.

Through the affiliation equality proclaimed by the international conventions on the protection of children's rights, the legislators intent to subdue all children to the same inheritance system. The inheritance system of the illegitimate child faces thus great modifications. He could henceforth rank equally with the legitimate child and benefit from a share of rights equal to those of the legitimate child in their father's heritage. He will be possible for him to inherit from his grand-parents by his will. No impediments will thereon restrict him from having with his grand-parents a reciprocal right of succession from one to the other. He could just as the legitimate child inherit in full in front of the legitimate ascendants. He should no more be deprived of any inheritance rights between illegitimate and legitimate collaterals. The illegitimate child could succeed in his father's place and vice versa.

Demonstrated in the frame of affiliation, equality has not succeeded in conquering all the legal systems in the sense that states with a Moslem legislation know only one affiliation type: the legitimate one. To this effect, the enforcement of Moslem law dispositions in legal systems will constantly require the intervention of international public policy. Through the consecration of this new inheritance system for all children, the execution of some laws excluding the illegitimate child from his parent's succession in an international dispute context will be likely to bring in an international public policy exception. This will be the case of the enforcement in the Cameroonian jurisdiction of the Moroccan law which prohibits illegitimate affiliation.

1.2. The intervention of the international public policy for violation of equality in the exercise of parental authority

Parental authority is the first form of a child's protection; this is the reason why it is defined as the power the legislation recognises to the father and mother over the person and property of an emancipated minor (GUILLIEN and VINCENT, 2014). The French Civil Code is more explicit when it defines parental authority as "the set of rights and obligations aiming at seeking the child's best interest. It is due to the father and mother until the child's majority or emancipation to keep him in his security, health, morality, to ensure his education and allow his growth with the respect due to him"[52]. This parent's authority over children is exercised both on his person and his property.

The authority on the child's person is shown by a couple of rights and consequential obligations determined by law in the child's interest (GIMALAC, 1980: 117) and depending on parents. Generally, it implies keeping the child, watching over him, raising him and all what is concerned by his growth including punishments. With the provisions of the 1804 Civil Code, the exercise of parental authority reflects a discrimination towards the mother with regards to legitimate affiliation in the sense that only the father was the one exercising the paternal authority. Whereas, in the case of the illegitimate filiations, the mother has the monopoly to exercise the paternal authority. Thus, as equality is consecrated between spouses in any marriage related issue, it initiated also the joint exercise of parental authority. Section 514 of the Burkina Faso family Code states that "parental authority is exercised by both the father and mother in the life of the marriage…". The family Code of Benin is more explicit in its section 407. The joint exercise of parental authority henceforth supposes that both parents watch over the child, care for his education and take in charge other related obligations attached to his person. The Cameroonian legislation is not precise on this matter. In the 2010 version of the Code's Preliminary Draft, the joint exercise of the parental authority has been devoted in section 345. Yet this idea has not been renewed in most recent versions. We can nevertheless infer from the removal of the title good father to husband, that the spouses are henceforth equal in the management of the family.

Relating the parental authority over the child's property, it is exercised following a couple of rules ensuring the good management of his heritage. The administration of the underage child's property is one of the attributes of parental authority. It enables the parents to represent him in all the legal acts and to administer his property in case he has one. It is the child's management of his property when he is underage so that he will recoup it at his age of majority. The legal usage depends on the administration; this means that, having the legal administration of his property, the parents enjoy equally the income generated by his property.

But in front of the legitimate affiliation, the legal administration of the child's property under the canopy of the Civil Code is due to the father. Section 389 sub 1 provides that "during the life time of the spouses, the father is the legal administrator of the property of their minor and non-emancipated children…". The father, holder of the parental authority has the monopoly of the management of their children's property. To

[52] Section 371-1 of the French Civil Code.

this effect, he can perform all the legal acts even that of unauthorized disposal. Exercising the parental authority, the mother, manages alone her minor child's property but if the child is acknowledged by the father, it is the latter who exercises that right.

Equality consecrated in the child's person management expand also on the latter's property. Section 444 of the Beninese family Code provides that: "the father and mother have the administration and right of use of their children who are minor". The legal administration of the minor's property is pure and simple when the parents exercise in common the parental authority[53]. It is the same stand taken by the French legislator. By virtue of the French law of the 23rd December 1985, if the parental authority is jointly exercised by both parents, they are legal administrators and the administration is pure and simple[54]. The legal administration of property of the minor child is henceforth done with a mutual agreement of the father and mother with besides the monopoly of one over the other.

It is however unfortunate to realise that the Cameroonian legislator did not follow the steps of his Beninese counterpart, whereas he has cancelled the title of good father for that of Husband, that which would infer an equality of spouses in the family management. The execution in his jurisdiction of the Moroccan law which bestows the monopoly of the exercise of the parental authority on the husband will be likely to involve the Cameroonian public policy. This parental authority granted to the father, gives him in full the power of decision on the child's education and its degree, the choice of his residence and other modalities relating to his religious education.

As the child's sole guardian, the legal representation, the child's care, the administration of his property are incumbent on him[55]. This is what comes out of this French case law[56] where the court has enforced the application of the equality principle of parents taking into consideration the fact that the foreign judgement of divorce which erases the joint exercise of parental authority bestowing on the mother the right to lonely take all the decisions relating to the children, giving the father injunctions restricting him from welcoming the children in front of another woman only in case of marriage, violates essentials principles of the French Law based on the equality of both parents in the exercise of parental authority and the respect of private life and family.

III. CONCLUSION

At the end of this study, the internationalization of family law reached through the equality principle doesn't stop nowadays to its incorporation in national law, but has become an objective of prime importance in the settlement of international dispute. The disposal of discrimination in the family frame is what any modern legislation is aiming at. This is the choice followed by the francophone black African legislation through the adjustment of equality in marriage and affiliation. Through this consensus on equality in the family frame, the international public policy mechanism finds, in the frame of the settlement of international disputes, a new universal and transnational basement which its intervention as soon as there is a violation of equality. The Cameroonian public policy would then preserve a universal value.

However, equality is not so easy to enforce in a so sensitive domain which family law which raises "national particularisms" (DJUIDJE, 2013: 24). This internationalist ambition faces internal difficulties of the different legal order which influences the international public policy in its initial way of supporting national values. Moreover, equality can only be enforced in a legal order when it matches the society expectations. This is reason why, even with the incorporation of the non-discrimination principle, the Cameroonian legislation has never yielded to the western excesses of homosexuality and transsexualism.

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