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The Impact of Customary Law on Children's Rights in Botswana

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Abstract : Botswana has a dual legal system, one based on customary law and the other on the received law. This appears clearly from the Constitution that ring-fenced customary law from any constitutional scrutiny. A customary practice may continue even if it discriminates against women and children. As a result of this, numerous human rights of children are infringed. Firstly, if parents are married under customary law and separated, the custody is granted to the father and the mother merely having the right to visit. Secondly, female children are not entitled to inherit property. Thirdly, there is no age for marriage under customary law and even a child at the age of 10 years can get married. Lastly, marital power of a husband still continues under customary law and therefore females are still treated as perpetual minors. The latter infringement of rights is not in the best interests of children and conflicts with Botswana's international obligations. Botswana is a signatory of various international and regional human rights instruments and it is suggested that it has to accelerate the incorporation of human rights instruments into domestic law in order to safeguard the best interest of children.

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