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Customary Law and Woman's Rights within the African System of Human Rights Protection

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Abstract

Of all the regional law systems, the African system offers a peculiar place to moral values – a fact that is demonstrated by means of the African Charter on Human and People's Rights which recognizes a special role to the African culture. The legal implementation of African traditions has determined, within the African nation-state, the establishment of a specific legal system that is organized upon two main levels (we refer to customary law and statutory law). Consequently, we can upheld the idea that this legal duality strongly impacts the sphere of the juridical protection of women's rights; this is obvious as the traditional African values contain provisions that challenge the principle of gender equality meanwhile, statutory law is consistent with Western-inspired norms according to which gender equality is deemed as essential.

In our paper, we aim to assess the issue of gender equality within the context of legal pluralism that is determined by the co-existence of customary law and statutory law by bearing in mind two fundamental hypothesis: (1) customary law is built of African moral traditions; it is unwritten and orally transmitted thus being adaptable to ever changing social realities; (2) statutory law is, on the other hand, written, unalterable and in agreement with international regulations that are destined to human rights protection and which are taught, by African scholars, to be the creation of Western legal schools. Within this framework, our analysis will take into consideration juridical institutions belonging to family law like marriage or divorce; furthermore, we will concentrate upon the manner in which these African customary practices influence the juridical protection of women's rights.

From the methodological point of view, we will use the hermeneutical method because all the dispositions belonging to customary or statutory law will be construed within a personal perspective.

Keywords: *customary law, statutory law, customary practices, women's rights.*

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African customary law-a way of maintaining the particularities of indigenous African culture

The African regional system has experienced during time extra-ordinary events out of which the most important was the colonial expansion policy[2] initiated in territory by the European States. Colonialism is the expression of the *ever-changing administrative, legal and social system* of the African territory through the formulation and promotion of policies which expresses the foreign legal culture. It is necessary to underline, *ab initio*, that although the African law underwent undeniable influences from the part of colonialism, the African legal system existed from the pre-colonial period. As the specialized literature mentioned concerning the subject (Banda, 2005, p. 14), *the African legal system is not the creation of the white man*; or in other words, *the African legal system was moulded and not created under colonialism.*

Originally the African law is the *law of custom* as dating from the pre-colonial period it brings together practices, customs, traditions specific to indigenous people, being, at the same time, the expression of cultural manifestations, ethical and moral precepts of the African community. Unlike the statutory law (official law), the customary law is unwritten, passed down orally, inspired by the indigenous culture, applicable to specific practices (Thabisha Rammutla, 2013, pp. 12-14). We deem that the African customary law expresses a *suis generis* construction within which it is combined formal rudimentarism with specific content elements -intended to capture the indigenous consciousness. In the field of women's rights, the application of customary law becomes problematic to the extent that customary practices which violate women's rights are promoted in order to strengthen the identity of the indigenous community. Although non-compliance with the principle of equity between genders is an issue which is revealed in some customary practices, the violation of women's rights is not a fact attributed to customary law effectively. The colonialism historical conjuncture has facilitated the introduction at the level of the African official law the principles and rules inspired from the European culture which, in turn, does not offer a privileged place to women's rights nor to the principle of gender equality. Thus, customary law has preserved untouched some practices contrary to women's rights due to maintaining some of the discriminatory

[2] *Brevitatis causa,* we'll use throughout our paper the term *colonialism* as synonim expression of the *colonial expanssion policy.*

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legal provisions at the level of the official African law despite the manifestation of colonialism. Regarding this aspect, profile studies (Banda, 2005, p. 18) have noted that it was natural to maintain during the post-colonialism period the same subordinated status concerning African women – a status that existed in the pre-colonialist period, taking into consideration the European colonists reasoning which was in favour of women's subordination. The discriminatory reasoning was based upon a multilateral dimension that joined two discriminating criteria-*race* and *gender*. Specifically, it was denied the equality in rights of the African women since *mutatis mutandis* European women were in a discriminatory situation.

The co-existence of customary law with statutory law determines, within the African legal system, a specific structure called *legal pluralism*. The particular construction of legal pluralism represents a commitment of the African Peoples to remain true to their own legal consciousness and to comply with the statutory law-modelled according to European legal culture (Rautenbach, 2010, p. 147). From our point of view, the relationship between customary and statutory law is one of *complementarity*, because customary law keeps unaltered the African identity while the statutory law receives influences from Western norms, thus accordingly regulating institutions such as *human rights, equality, individual freedom, human dignity*.

This does not mean that customary law and statutory law are two different categories in matters of content and purpose of regulation. On the contrary, the values listed in the content of statutory law are also found in the content of customary law under the amendment according to which, in the case of customary law, social and legal values are subordinate to the community. In other words, human rights, human dignity, freedom and equality exist as individual prerogatives acknowledged by customary law as long as the individuals shall comply with the community customs and carry out their duties towards the community. The complementarity between customary law and statutory law exists because, at the formal level, there are common concepts used by the two legal categories but their interpretation is different.

Customary law expresses the commitment of the individual towards the practices that are accepted and promoted by the membership community thus strengthening the individual loyalty towards the latter. In the given context, customary law is the legal instrument by which *comunitarism* is supported as a peculiarity of the African legal system. We designate, by means of the *comunitarism* concept, the individual attachment to

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community and its practices. The communitarism produces effects upon the African legal system including in the matter of *the type of justice promoted.* Customary law, as community law pursues the imposition of a *peculiar type of justice of distributive nature.* Distributive justice is characterized by flexibility-being a the type of justice negotiated between the community members in order to achieve the best solution for the whole community, including for all parties involved in the conflict-both victims and abusers (Oko, 2004). In this context, customary law expresses the conscience of the community -that of promoting the solidarity between individuals involved in the conflict so that, even if the interests of the victim are considered first, the rehabilitation of the offender is not neglected.

Customary law in the African Charter on Human and Peoples ' Rights

The African Charter on Human and Peoples' Rights[3] is the first regional instrument drawn up within the African system of human rights protection with the purpose to celebrate the indigenous perspective upon *human rights* and, implicitly, with the purpose to celebrate the effects produced by the African culture concerning this subject. Up to the adoption of the African Charter, *human rights* represented a Western concept which was imposed unilaterally into the African legal system. The adoption of the African Charter allowed the exposure of a *suis generis* manner of conceptualizing human rights- the African culture being the main tool used for this purpose. The *comunitarism*-translated into the individual devotion towards community is included in the African Charter on Human and Peoples' Rights in a peculiar manner-derived from the structure of the Charter. Unlike other regional legal documents, the African Charter imposes a unique system of *rights and obligations* assigned to the individual, recognizing in favour of the individual *fundamental prerogatives* and also *obligations* which he must comply with in the relations with the State and the membership community. Among the rights and obligations arising from the African Charter, there is an undeniable *correlation ratio* (because, according to the general theory of law, each right involves correlatively, a duty). The report in question is not of *causal* nature because, as the speciality literature notes,

[3] The African Charter on Human and Peoples' Rights was adopted on 27 June 1981 and came into force as of 21 octomber 1986. *Brevitatis causa* we will use throughout our paper the expression *The African Charter* in order to dessignate *The African Charter on Human and Peoples' Rights.*

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violating an obligation prescribed by the African Charter does not implicitly determine, the failure to grant the individual the enjoyment of the established rights. (Braun, 2008, p. 3)

The preamble part of the African Charter underlines the relevance of the cultural factor for the legal human rights approach at the regional level. According to paragraph 5 of the African Charter's preamble- *taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights*. The wording contained in the preamble attests that the *cultural factor* constitutes a source of inspiration for *defining human and peoples' rights at the regional level*. Also, the expression used in the preamble emphasises the comunitarist dimension upon the individual prerogatives in a manner that determines the transformation of the Western expression *human rights* into indigenous expression *human rights and peoples' rights*. The African Charter includes specific rules in the field of Peoples' rights (Gittleman, 1982) by consecrating in Article 19-*the right of all Peoples to equality and rights* and *the right to self-determination*-Article 20. In our opinion, the cultural factor is closely related to the recognition *in expresis* of Peoples' rights: the experience of colonialism, apartheid and genocide make an integrant part of the history of the African continent and are likely to shape the African traditions and the conscience of indigenous peoples. We note that, the text of the Charter surprises, at the main level, the rights of the African People without providing further explanations on the *meaning of Peoples concept*. However, the African Charter's preamble invokes the historical circumstances that led to the need for regulating Peoples' rights: *conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, language, religion or political opinions*.

The cultural factor influencing the regulations contained in the African Charter are notable including the matter of equality. Concretely, article 18 includes the legal protection of women's rights in the article intended for *family rights and vulnerable groups*. We appreciate that this logic in approaching women's rights is *per se* discriminatory as it exclusively allocates to women's legal protection to the private sphere and to the fulfilling of the role of mother and wife. The references related to the legal protection of women's rights are based on a single statement connected to *States 'obligation to ensure the elimination of all forms of discrimination against women;* nevertheless,

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within the same legal assumption, article 18 underlines the obligation to *protect the rights of women and the child as stipulated in international declarations and conventions*. Reducing women's rights to the private sphere or including the legal issues of women's rights protection in the field of vulnerable groups protection entails a particular form of discrimination, by including women in the frame of society's marginalized typologies. A comprehensive approach of women's rights supposes the granting of a specific place, the individualization of women's rights issues by analysing some particular aspects. The generalization of the need of protecting women's rights, respectively inserting women's rights within the issues relating to the protection of persons with disabilities or family protection denotes the lack for ensuring the highest degree of protection in women's favour. In this context, it is safe to state that cultural factor (custom) has a superordinate position amongst the African Charter regulations. The cultural factor is present, including in matters of women's rights due to the fact that it proposes that the legal protection of women's rights is in close connection to the private sector and the traditional roles that the African society assigns women.

Customary law in the Additional Protocol to the African Charter on the Rights and Peoples' rights concerning women's rights[4]

Unlike the legal instrument which preceded it, the Maputo Protocol achieves a balance between the cultural factor and women's rights, solving the dispute between the pre-eminence of African culture and the legal protection of women's rights in favour of the second element. The Protocol's regulations are not totally contrary to the cultural factor, but they promote a cautious analysis on the subject. The preamble of the Maputo Protocol expresses the guidelines pursued to be fulfilled, *the removal of all practices that are harmful to women's rights*. Moreover, the preamble to the Protocol recognizes that the ratification of the African Charter on Human and Peoples' Rights at the regional level, is a legislative initiative insufficient for the elimination of all forms of discrimination targeting the female

[4] The Additional Protocol was adopted in accordance with article 66 of the African Charter on Human and Peoples' Rights; this legal instrument was adopted on 11 July 2003 by the African Union Summit in Maputo, Mozambique and came into force on 25 November 2005. *Brevitatis causa*, we will use the expression the *Maputo Protocol* or the *Protocol* to refer to the Additional Protocol to the African Charter on Human and Peoples' Rights with regard to women's rights.

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segment, as the latter continues to assume the role of a discrimination victim, respectively the role of a victim of harmful practices.

In article 1-*Definitions* of the Protocol, letter g, it is stated the explanation of *harmful practices*-this being built around the idea of discrimination against women promoted through the collective mentality. Concretely, the provisions of article 1, letter g of the Protocol stipulates-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*. We deem that, the mentioned provisions implicitly invoke the effects of customary law on the legal sphere of women's rights protection. The unwritten customary law was preserved through comunitarism respectively, through the individuals adherence to the rules and practices required by the membership community. The main reason that has contributed in time to the recognition and preservation of the harmful practices that affect women and their rights has consisted, from our point of view, of the interest of *preservation the specific of the membership community and the identity affirmation within the group*. As stipulated within the provisions of the preamble, practices contrary to women's rights subsist in spite of the official establishment of some legal regulations aimed to improve women's discriminatory situation. The phenomenon is made possible by the construction, using customary law, of a collective mentality inside which the manifestation contrary to women's rights are beneficial to the community and even necessary for maintaining male authority and the patriarchal structures.

Article 5, letter *a* of the Maputo Protocol proposes the recovery of the negative situation which was created by promoting those practices that are harmful to women by means of *increasing the degree of information in all the sectors of society concerning harmful practices through formal and informal education and support programs*. We note that, the cited provision proposes *informal means* for settling the issue of the practices that are harmful to women, recognizing in this way, the psychological dimension of the problem. The adoption of a *stricto sensu* legal perspective in solving problems produced by customary practices improper to women's rights constitutes an initiative destined to failure. The development of cultural practices that are referred to in the text of the Protocol occurs on a background of mental and behavioural patterns responsive to gender discrimination so that the rule of law must regulate relevant measures for addressing the shortcomings generated in the field of women's rights protection. *Exempli gratia*, the Maputo Protocol claims its

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uniqueness through legally addressing the African practice of *female genital mutilation* in Article 5 letter *b*. Studies undertaken on the subject of female genital mutilation (Mottin-Sylla, Palmieri, 2011, pp. 7-8) acknowledge its complex nature showing that the genesis of the phenomenon is cultural and arises from the lack of effectively render responsible both women and men as regards the subsistence of the phenomenon of female genital mutilation. Women allow the continuation of the practice of female genital mutilation due to the desire to conform to the social standards imposed by the membership community while men avoid to express a clear point of view on the subject as the patriarchal mentality persists or, because of the fact that, although they adhere to the principle of gender equality, they are not able to impose their opinions being accordingly obliged to comply with standards laid down by the community traditional leaders.

The content of article 5 is built in the form of a legal reaction to legal cultural practices contrary to women's rights, amongst which is emphasized the practice of female genital mutilation.

The carefully analyse of the Maputo Protocol allows us to notice a legal framework well-articulated around the limitation/elimination of customary practices manifested through customary law that violate/limit women's rights. Article 17 establishes *women's rights to a positive cultural context*, regulating the possibility to co-opt the female segment in the action of formulating cultural policies in order to obtain cultural practices sensitive to all categories of human rights. Similarly, article 12 introduces in the field of the *right to education and training*, the principle of eliminating women's subordination from the educational documents that have as final purpose obtaining an education able to promote gender equality. Concerning the wording of provisions meant to directly approach customary practices that violate gender equality, there is a coherent set of provisions. *Exempli gratia*, article 6 establishes with regard to marriage issues the rule of *mutual consent*, pointing out that the minimum age for contracting marriage shall be 18 years for woman. Also, the practice of polygamy is approached directly, being offered a balanced solution to this phenomenon so that *it is expressed the pre-eminence of monogamy and are declared the necessary support and legal protection in favour of those women who are parties in polygamous marriages.* In the same vein, article 20 pursues the removal of those customs meant to defeat the rights of widows while article 21 aims to eliminate women's discrimination in matters relating to inheritance. Returning to customary law it is prevalent in matters of family relations, being used to regulate private aspects relating to

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inheritance, marriage, divorce, the status of widows. In the next section of our paper we will pursue to identify and bring to the analysis those particular aspects afferent to family law institutions governed by customary law norms.

The application of customary law in the private sector: customary marriages and dissolution of marriage through divorce

The recognition of customary law as an autonomous branch of law within the framework of the African regional system had a powerful influence on the manner of regulating private law institutions. African legal pluralism has allowed the continuation of the statutory (official) law to normalize public affairs, while customary law was recognized as an authoritative source in the private subjects. The duality dictated by legal pluralism leads to a double standard in the field of women's rights protection (into the public system) and to the violation of women's rights under unwritten customary rules. The above presented legal pluralism outlines, in relation to the status of women, an inconsistency that will bring, in the future, shortcomings in ensuring a more extensive protection to women.

Customary marriages constitute a special topic within the African regional system because they are institutions governed by customary law and thus customary marriages will impose an inequality condition concerning women's rights. Customary practices face, due to their unwritten character, the difficulty to be coded so that, under the appearance of the individual's adhesion to the community, customary practices may produce serious violations to women's rights. The recognition of customary marriages by statutory law represents an additional challenge in guaranteeing the legal protection of women's rights, as the customary law legitimacy occurs *lato sensu* and not in private for each customary practice in part; in addition, the variety of customary practices makes it impossible to assess their compliance with the human rights doctrine as it results from the traditions of democratic states. In order to prevent the tendency of promoting by means of statutory law some customary practices contrary to human rights, the solution adopted consisted resumed to the *rejection clause*. The latter imposes the condition that customary law officially recognised to be applied in the way it does not contravene to *natural justice and morality* (Pimentel, 2014). Customary law limits are not explained and this increases the ambiguity regarding their application. The specialized literature (Pimentel, 2014) has interpreted the rejection clause as a proof of the domination of the colonizers upon the indigenous nation as this clause is their creation. In the same vein, Ethiopia

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has set as limit of customary law *national values*-without providing a *in expresis* definition to this concept (Berat, 1991). Under these circumstances, the limits of customary law are non-operative and the violations of women's rights continue to occur given the official recognition of customary law.

The official recognition of custom, the lack of rigour in establishing the limits applicable to customary law, the variety of the customary practices applied -are relevant premises for maintaining the subordinate status of women. Regarding the matter of customary marriages, the incertitude in guaranteeing women's rights is in all more obvious. The specialized literature (Thabisha Rammutla, 2013) has noted certain peculiarities of customary marriages meant to determine a unequal position for women. The most relevant features refer to the *conditions of validity for the celebration of customary marriage* such as *lobolo payment – bride price; the consent of the families of the future bride and groom, practicing polygamy in the form polygyny*. The validity of customary marriage depends directly upon the negotiation and payment of a value for acquiring in marriage the bride. The amount required for contracting the marriage is established by means of the agreement between the family of the groom's father and the family of the father of the bride whereas finally the respective value will be gained by the bride's family, without any possibility for the future bride to acquire it (neither in the hypothesis of marriage contracting and consumption). The payment of the bride price as a requirement for validating the customary marriages represents in itself a discriminatory act, causing the reification of women and, implicitly, their placing in a subordinate position. A specific issue related to *lobolo payment* consists in its acknowledgement and regulation through statutory law rules. *Exempli gratia*, South Africa regulates the price of the bride as an essential element of validity for the celebration of customary marriages in both acts dedicated to the subject –*The Black Administration Act No. 38 of 1927* and the *Recognition of Customary Marriages Act No.120 of 1998*. In both documents, the bride's price is referred to as the essential factor in validating customary marriage, thereby establishing, *ab initio*, the marital relationship in the form of an arrangement in which the future wife passes, a result of the marriage, under the authority of her husband. In other words, the acceptance, by means of statutory law, of the payment of the bride price, implies the recognition of women discrimination – as female qualities are considered as the counter value gained by the husband as a consequence of the payment of *lobolo*. In light of the previous information exposed up to this point in our study, it is just to deem that the establishment of *lobolo* as an element of the

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official law does not prove respect for indigenous culture and customary law but rather constitutes the expression of *acknowledging discrimination against women and the bringing this phenomenon to the rank of statutory rule.*

Lobolo it is not the only inconvenient of customary marriages; polygamist nature of the latter- controlled through the rules of statutory law reinforces the marital customary practices which promotes the discrimination of indigenous women. The regulation imposed by article 6 of the Protocol of Maputo illustrates the pre-eminence of polygamy and militates in favour of women's protection, regardless the polygamist or monogamous character of marital relations. It is interesting to note that *the recognition by means of customary law, of the polygamist character of customary marriages* is a form of tacit support of women discrimination, invalidating the principle of gender equality, as it is brought to the level of constitutional value in some African States within the Inter-American system of human rights protection. Once again, the example of South Africa is enlightening : section 9 of the Constitution of the Republic of South Africa establishes the guidelines of the equality theory (*equality before the law and the right to equal protection before the law; the right to equal benefit of the rights and freedoms; the prohibition of direct or indirect discrimination*) and of the framework documents governing customary marriages (*The Black Administration Act No. 38 of 1927* and *The Recognition Of Customary Marriages Act No. 120 of 1998*). From our point of view, the provisions of section 9 of the Constitution of South Africa are more advanced compared to the equality rules adopted in other regional systems of law, given that, among the prohibited discriminatory criteria there are included both *gender* and *sex*. The progress brought by the legal rules contained in section 9 of the South African Constitution lies in the distinction between *sex-as a biological construct* and *gender-as cultural construct*, including both aspects within the sphere of discriminatory criteria in order to provide superior legal protection to women. This legal perspective is not consistent with the legal acceptance of customary polygamist marriages. Specifically, the inconsistency between the two aspects determines the conclusion that, in matters of customary marriages, the cultural norm (customary classic law) is more resistant than the norm (statutory law).

The dissolution of customary marriage through divorce signifies a legal situation that entails a high degree of particularity determining, in regard to women, a hybrid status-with situations of equality and inequality. On one hand, a customary marriage cannot be broken through a divorce initiated by the wife but, at the same time, neither the husband can propose

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the dissolution of marriage through divorce. From this point of view, both wife and husband are in equal situations because, applying the principle of symmetry, if the celebration of customary marriage was generated by the *consent of the families of the future spouses*, then also the dissolution of marriage will be initiated by the extended family of the couple, without consultation of the two spouses. Thus, in the pre-colonial period, in case of divergences within the couple, the husband can return the wife to her family home and, when divergences could not be surmounted, the husband could request from the family of his wife the payment of *lobolo*. We keep in mind that similarly, within Islamic marriages, the *mahr* (*bride price) constitutes an essential condition for the celebration of the marriage* while, in the case the wife initiates divorce, the husband must return the amount paid to celebrating the marriage. Returning to the African customary law, if the process of casting away of the wife to her family is not accompanied by *lobolo* payment then the husband may claim anytime its rights upon the wife, asking her to return to the conjugal domicile.

The specialized literature (Herbst, Plessis, 2008) introduces a different factual situation which may lead to divorce-if the wife decides to leave the conjugal domicile as a result of her husband's violent behaviour or considering any other legitimate reason, the husband can recover his wife (*phutuma*) by paying her father an amount symbolizing the punishment assumed for the reprehensible behaviour applied to the wife. If the husband does not initiate with the father of the wife negotiations for recovering the wife it means that the husband initiated divorce. The *Recognition of Customary Marriages Act* regulates the possibility to establish divorce as a result of the *irremediable marriage failure* – an aspect that is understood differently depending on who initiates the divorce proceedings. Thus, the husband can initiate a divorce if the wife commits one of the following acts: adultery, incest, the refusal to return to the conjugal domicile; on the other hand, the wife may ask the divorce in case of the husband's long and unexcused absence, in cases of serious physical abuse or in cases of impotence.

If in terms of the initiative in the issues of marriage dissolution the ratio between the parties rights and obligations is largely balanced (except for the *phutuma* situation), the effects produced by customary marriage dissolution through divorce are depicted negatively on the status of women.

As we have underlined above, the woman can return to her family of origin but from the material point of view she cannot acquire property upon goods achieved during marriage. As concerns the raising and education of

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children resulted from the marriage, the responsibilities assigned to the former wife are essential-as she is requested to ensure the care and education of children within her family of origin, without the active involvement of her former husband. According to the rules prescribed by statutory law, the situation of the child/children resulted from a customary marriage dissolved through divorce will be negotiated in light of the principle of the paramount interest of the child, taking into account the rules of customary law (if applicable). In light of this hypothesis, the rules of customary law establish in woman's charge the obligations regarding the child and in favour of the father the rights regarding the child.

The Recognition of Customary Act provides the possibility of equal division of the assets gained during marriage if the spouses have opted for the community marriage regime, nevertheless, in this hypothesis, the cultural norm has pre-eminence upon the legal norm so that the equal division of assets is not usually achieved. The statutory law regulation of customary marriages has also brought, in the sphere of public rules, the method of customary marriage dissolution through divorce, The Recognition of Customary Marriages Act stipulating *in expresis* that the decision of the court of justice concerning marriage dissolution is applied inclusively to customary marriages.

Conclusions

In the present paper, we aimed to show the specificities of customary law and the impact it produces within the sphere of the legal protection of women's rights. The African legal system is dominated by common law and the legal approach of traditions and African values constitutes a difficult aspect that requires a fine balance in order to be treated correctly. Culture is raised at the status of a genuine rule of law that has pre-eminence in conflict situation with a norm of statutory law. Thus, we find ourselves in a situation where the cultural norm is a norm of conscience which comprises and expresses *what is specific for the indigenous peoples*. The individual's adherence to the *rule of conscience is ancestral*, absolute, it derives from the individual's desire to be in agreement with the community in which he lives and, in the event of a collision with the statutory provisions, the individual tends to prefer the cultural norm. In the matter of the *gender equality*, statutory law inserts the *gender equality principle* thus approaching to Western norms, while the customary law *denies the existence of real equality between genders because this principle contravenes to customary*

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practices as used by indigenous societies. The legal protection of women's rights constitutes a sensitive issue when the rules prescribed by the norms of statutory law and those imposed at cultural level cultural are not concordant. Consequently, we do appreciate that the only pertinent conclusion we can draw consists in that it cannot be advanced an instant and final solution to the issue of women's rights protection within the African regional system. The harmonisation of statutory rules with cultural norms can be achieved through *changes operated within the African collective mentality* and this represents a progressive process.

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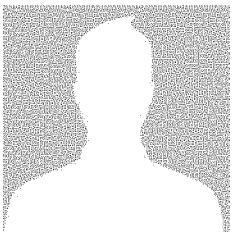

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