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CEDAW and Local Culture: Effectiveness in the Field.

Case Studies of Sierra Leone and Uganda.

Name of the Student: Daniele Grivel

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Supervisor: Prof. Helena Pereira De Melo,

Second Semester University: Universidade Nova, Lisboa.

Abstract

The analysis of the implementation of CEDAW in Uganda and Sierra Leone, as emphasized by the Country and Shadow Reports of the last decades, proves that these two Countries have not yet domesticated the women's rights principles. I start then an analysis of the general effectiveness of CEDAW after more than 30 years from its entry into force. As a result of that, I argue that the strength of CEDAW resides in its capacity of persuading local cultures in order to eradicate harmful practices; compliance with international women's rights must originate from the internal of the culture. Therefore, we must change the approach with the traditional culture. Culture must not be confused only with harmful practices. We must stop treating it as something hostile, immovable and with negative characteristics. It should be considered as a possible ally for the respect of women's rights standards, a resource in removing harmful practices. To reach this ambitious objective, a localization of the norms of CEDAW is needed, together with the willingness to tailor the international principles to the local needs. Hence, resources already present in the traditional local cultures must be utilized. In Uganda and in Sierra Leone customary courts can represent a good starting point to relate with culture in a positive way.

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CHAPTER 1. Implementation of CEDAW in Sierra Leone and Uganda

Why Uganda and Sierra Leone?

I would like to enquire the situation of women and the state of implementation of the Convention for the Elimination of all Discrimination Against Women (CEDAW) in the African Countries of Sierra Leone and Uganda. The decision to focus my research on their situation is due to the fact that I had the possibility to work in the rural areas of both countries, leading women's empowerment and women's rights projects funded by European Community (EC) and United Nations fund for children (UNICEF). During this time I had the possibility to experience the inadequacy of some instruments in the hands of development operators in particular geographic areas (namely the eastern province of Sierra Leone: Kono District; the northern area of Uganda: Pader District) characterized by rural population.

Considering the real situation of the women of these areas, appeared every day clearer the existing gaps with the international declarations and the national and international "rooms of power". The very different starting positions and points of view of Human Rights operators on one side and beneficiaries of the projects on the other, made an effective dialogue very difficult and sometimes even impossible.

Therefore I started wondering about possible mechanisms to obtain a better and more concrete application which allow CEDAW to be really effective, and to translate and localize such particular human rights, the women's rights, avoiding rejections due to their imposition from the top.

Typology of the analysis

For the analysis of the concrete situations, I will try to have a complete framework and to compare different perspectives and points of view. The following documents will be taken in consideration: country reports submitted to CEDAW, their analysis and consequent Final Conclusions and Recommendations from the CEDAW Committee. Aside, also Shadow Reports from CSOs and alternative reports from NGOs active on the field will complete the scenario.

Principles of CEDAW expressed in the preamble of the convention. Does CEDAW really perceive its targets?

The Convention on the Elimination of all forms of Discrimination against women is the culmination of more than 30 years of work by the United Nations Commission on the Status of Women¹. Significantly, beyond the consideration of the civil rights and the legal status of women, particular attention is dedicated to human reproduction and to the impact of cultural factors on gender relations. CEDAW is the only convention that takes in consideration the cultural factors and that is concerned with the dimension of the human reproduction.

The ambitious aims of CEDAW, as expressed in the preamble, do not leave concerns and challenges out of consideration. Starting from the point that extensive discrimination against women still exists, considers them as obstacles to the participation of women in the life of the country; poverty is considered as a factor; development and peace need an active role of women².

Last but not least, in the Preamble, the need of a change in the traditional role of men and women in the society and in the family is considered necessary in order to achieve full equality between men and women.

My analysis will be conducted upon the light of these principles; in fact, according to the historical and political situation of Uganda and Sierra Leone, some of these aspects are more actual than ever. On the other side, the persistence of these challenges can sometimes raise doubts about the real efficacy of CEDAW as tool against women's discrimination.

I will also analyze the approach of CEDAW. From some formulation of CEDAW principles, it is clear the imposition from the top, without a real enquiry of the opinions of the beneficiaries³. In some cases there is a lack of flexibility from CEDAW Convention and from the Committee in their continue exam of the women's situation.

¹ CEDAW, Introduction.

² CEDAW, Preamble.

³ For example SL CEDAW Concluding report 2007, n. 21, where awareness is requested without consultation of the stakeholders. The CEDAW imposes and order the national authorities to impose the local officials.

1.1. Sierra Leone.

Physical, geographical and political description

Having been one of the poorest countries of the world, during and immediately after the civil war that lasted for more than 11 years, Sierra Leone still suffers from the consequences of the war and it is still affected by poor conditions of the population. The Country is inhabited by almost 6 million of inhabitants, mostly concentrated in the rural areas. It is characterized by few big cities and several small villages, an inadequate street system which does not allow an easy travel throughout the country.

Upon an observation and after the examining of the CEDAW and the UN and NGOs documents, emerges that the country is not only geographically, but also socially very broadly divided. The economic and social situation of the area of Freetown known as “Western Area”, with bigger presence of the State, better implementation of the rule of law and more equal situation does not exist in the other provinces. The two major religions Christianity and Islam⁴ are not deeply eradicated in the population, who believes a lot in Animist and traditional religions.

The following analysis is a combined examination of the Country Report submitted from the State of SL in 2006 and in 2011 (even if the last one has not yet been examined by the Committee), the Shadow Report submitted in 2006 by SLANGO and the Concluding observation of CEDAW Committees in 2007.

Situation of women in Sierra Leone

According to the Shadow Report, “The majority of the women of Sierra Leone are living in a “desperate situation”⁵.

Sierra Leone signed the CEDAW on 21st September 1988 and ratified it on 11th November 88, with entry in force in December 1988, without any reservation, declaration, objection or derogation. The country reports I – V have been all together released in a joint documents to CEDAW with big delay only in 2006 and analyzed in 2007. The Country report due in 2009 has been received in 2011 and it has yet to be examined by the CEDAW Committee.

⁴CEDAW, SL Country Report, 2006 n.2.4.

⁵CEDAW, SL Shadow Report, 2007 p. 38.

The situation of the country and the kind of commitments described in the Country reports are very different from those emerging from the Concluding Considerations and the Shadow Report. The situation described by the Shadow Report⁶ talks about a “desperate situation of the majority of the women in Sierra Leone”: the CEDAW Committee has the same conviction.

Generally we could say that there is a big concern about the lacking of “domestication” of the Convention in the Sierra Leonean law. The Relevance of the Convention, even after almost 20 years from the ratification is not established in the State Party⁷.

The efforts of complying with the convention are blocked by delays at Parliamentary levels and the willingness to maintain legislation and customary laws which are discriminatory⁸.

Even with the institution of a specific dedicated Ministry: The Ministry of Social Welfare, Gender and Children Affairs (MSWGCA), its operability is affected by a weak institutional capacity for the advancement of women. The chronicle lack of capacities, authority reduces the possibility of full implementation of the Convention⁹.

In the rural areas of the country, the patriarchal attitude is dominating the cultural life, and no sustained and systematic actions have been taken¹⁰: the stereotype of the women as inferior is largely shared in the country.

Female Genital Mutilation has high incidence in the Country¹¹. Mostly in the rural areas, the rules and practices belong to secret societies, with affiliation rules and are surrounded by secret-witch-magic atmosphere.

After 10 years from the end of the hostilities, also due to the non-observance of the indications given by the Truth and Reconciliation Commission, the war is still producing indirect consequences. In the educational, professional and health level, the women are suffering in a bigger level for these consequences.

The rural women, the traditional harmful practices reflecting in their domestic situation are not seriously targeted at legislative and practical level. Until 2007, the basic

⁶ Presented by SLANGO (the NGO umbrella of Sierra Leonean NGOs) in 2007.

⁷ CEDAW SL Concluding Observations, 2007 n. 10.

⁸ CEDAW SL Concluding Observations, 2007 n. 10.

⁹ CEDAW SL Concluding Observations, 2007, n. 14.

¹⁰ CEDAW SL Concluding Observations, 2007, n. 20.

¹¹ CEDAW SL Concluding Observations, 2007, n. 22.

instruments to face the problems had been not yet elaborated (disaggregated data were not available, for education, work and institutional political participation of women), and a serious reform of the limitations due to the marriage and customary laws has not yet been undertaken.

PART I Already analyzing the Sierra Leonean legislation in complying with, dedicated to the definition and elimination of discriminations, to the fights against the gender stereotypes and the exploitation of women (part I of the Convention), is visible that SL did not undertake a clear and univocal position to comply with CEDAW's prescriptions.

Art 1 definition of discrimination against women

Primary attention must be given to the analysis of art 27 SL Constitution. Already defining discrimination (also the one against women), the Constitution of SL does not take a univocal and clear position. The Section 27 of the Sierra Leonean Constitution in its 1, 2 and 3 subsections¹² guarantees protection against discrimination de jure and de facto¹³. In the same article, the subsection 4 delimits spheres where situations that are discriminatory in themselves, are perfectly lawful and justifiable. According to the Country Report that Sierra Leone presented in 2006, "If the law makes provision with respect to adoption, marriage, divorce burial, devolution of property on death or other interests of personal law¹⁴" the norm of the Constitution that defines discrimination shall not apply.

The subsection 4 of section 27 of the Constitution represents an open door that justifies discriminations/harmful practices and impunity for the perpetrators in some delicate and crucial areas for the welfare of women.

This Constitutional norm is furthermore characterized by a particularly difficulty to be removed, considering the need of a referendum, before bringing a modification bill in front of the President. The Law Reform Commission founded in 1992 could not do

¹² According to the art 27 (1&2) of the Sierra Leonean Constitution of 1991, there shall not be discriminatory laws in themselves or in their effects, on the basic factors, including sex.

¹³ CEDAW, SL Country Report, 2006, n. 8.2.

¹⁴ CEDAW, SL Country Report, 2006, n.8.2.2.

anything, because of the very strict conditions¹⁵ needed for amendment of the Constitutional section. Despite the accurate requests of NGOs and the remarks present in the CEDAW concluding observation in 2007, the Constitution still appears in the same way in 2011¹⁶. The Constitutional Review Commission, with the specific aim of reviewing the Constitution in order to amend it in line with the “economic, social and political developments that have taken place nationally and internationally since 1991” did not obtain real tangible results. In fact, the request to completely repealing of the section of the art 27 is since three years under the attention of the Executive and no measures have been taken.

Also comparing the legal situation with an observation at field level, it is clear the big relevance that the traditional authorities have in the rural areas. The willingness of maintaining the dual-parallel system (I presume politically necessary to allow the recognition of the centralized power), through the formal recognition of traditional power brings some consequences in terms of legislation and application of CEDAW. It creates problems to legislate and judge, because the most delicate situations in which women are discriminated are under the monopoly of the customary law provisions; furthermore also the power machinery is in the hands of traditional institutions officials and chiefs.

In these areas, ordinary and customary law can bypass the constitutional norm of non-discrimination, who are not able to insist on the spheres that concern the majority of the population of the Country.

Art 2.Obligation to eliminate discrimination

Until date, CEDAW has not yet been passed into law by the Parliament and therefore cannot be enforced by the Courts of Sierra Leone¹⁷. The Convention has not yet been fully domesticated to be part of the laws of Sierra Leone¹⁸.

¹⁵ CEDAW, SL Country Report, 2006, n. 8.7. The approval of 50% of the voters is requested, and the participation must be of 2/3 of the valid voters. It was supposed that such a referendum could be inserted in the elections of 2007, and it has not been inserted.

¹⁶ CEDAW, SL Country Report, 2011, nn. 2.3.6, 2.3.7.

¹⁷ CEDAW, SL Country Report, 2006, n. 9.1.

¹⁸ CEDAW, SL Country Report, 2011, n. 2.1.1.

As already seen, several principles and anti-discriminatory provisions of the Constitution¹⁹ are all disabled by the number 4 (d) of the sect 27: through this article most of the significant laws discriminating against women apply against the non-discrimination articles.

In some occasions the partial regulation provided by the Constitution norms results in discriminatory practices: discrimination is forbidden only in the public sector²⁰. Despite the request of the Constitution Review Commission which suggested an extension of the forbid of discrimination for any office also in the private sector²¹, the Constitutional norm continues to appear in the same way (it applies only – as said- with regard of the public sector).

Even if some Constitutional basics are asked for liberties and security of the person²², sometimes criminal laws fail to protect women against domestic violence²³. Violence exercised by the man against his wife is allowed, until it does not arrive to serious wounds or it does not degenerate in murder. The wives accept this as natural and inevitable and do not demand for justice. Considering that the domestic arena is the place where the majority of violence against women takes place, the space left without protection is really very broad.

In this scenario, the legislative reforms undertaken by the Government and Parliament (Devolution of Estate Acts, Domestic Violence Act, Registration of Customary Marriage and Divorce Act, Child Rights Act and Chieftaincy Act) are not seen as sufficient for a real “domestication of the Convention in the Country²⁴”.

On the other side, we must consider the big influence of customary law in the country. The fundamental principle of the customary law, in all the ethnic groups of SL, is the superiority of men towards women. This principle is the basis for discriminations in social, political, civil, economic, cultural and every other right²⁵.

¹⁹ Chapter II of the Sierra Leonean Constitution, Section 15, Section 27.

²⁰ Constitution of SL sect. 27 (2).

²¹ CEDAW, SL Country Report, 2011, n. 2.3.7.

²² Art 15 and 20 Constitution of SL.

²³ CEDAW, SL Country Report, 2006, n. 9.1.12.

²⁴ CEDAW SL Country Report, 2011, n. 2.1.5.

²⁵ CEDAW, SL Country Report, 2006, n.9.2.1.

The women victims can bring their claims before a Customary Court (Chiefs or Local Courts): nevertheless, the price to be paid in terms of exorbitant fines, unlawful rulings, humiliation or imprisonment of women seeking justice still discourages them to use customary justice in rural areas²⁶.

Art 3 Equality in Political, Social, Economic and Cultural fields

The Gender and Children's Affairs Division of the MSWGCA is the National Machinery with the mandate to promote gender equality, gender mainstreaming and to implement CEDAW²⁷. The fact that such a dedicated Ministry and a division have been instituted does not reflect a real intention to address women issues. In fact, until the beginning of 2001, it received less than 1 percent of the fiscal annual budget, and it operated mostly through the big support provided by the international cooperation. In the budget of 2011, the amount reserved for the MSWGCA was increased, but still the figures talk about an insufficient funding²⁸. It is also weakened by understaffing and lack of preparation of the staff of the gender machine. The gender focal point persons in all Line Ministries in charge of mainstreaming the gender issue are mid-level workers unable to influence policies and decisions.

Even if the Parliament in 2007 enacted the Registration of Customary Marriage and Divorce Act; the Domestic Violence Act; and the Devolution of Estates Act, the effective implementation of the laws is weakened by not functional for administrative and other constrains²⁹. Even when the strategies/policies manage to become laws, beyond the problems linked with the bureaucratic machine, there is a lack in advertising and making the policy public and known³⁰. Only recently, the inefficiencies at very basic level have been addressed. National and regional structures (a statistical unit of the Gender Directorate of the Ministry of Social Welfare, Gender and Children's Affairs has been established and fully operationalized. Regional Gender desk officer are monitoring the gender mainstreaming in various level of SL Gov)³¹ have been

²⁶ CEDAW SL Country Report, 2006, n. 9.2.2.

²⁷ CEDAW SL Country Report, 2006, n. 10.1

²⁸ CEDAW SL Country Report, 2011, n 3.2.2

²⁹ CEDAW SL Country Report, 2011,n. 3.1.4.

³⁰ CEDAW SL Country Report, 2011, n. 3.1.4.

³¹ CEDAW SL State Report 2011, n. 3.2.1.

established to obtain disaggregated data by sex: to monitor gender mainstreaming at central and local government level.

ART 4. Temporary special measures for accelerating de facto equality

The SL Constitution does not explicitly provide for affirmative actions³². Nonetheless policies have been undertaken by the Ministry of Education, Science and Technology (MEST) that support the girl child education scheme mostly for the disadvantaged provinces (eastern and northern)³³.

Another special measure has been adopted to give women the opportunity to participate to decision making at local level. The Local Governmental Act of 2004 provides, indeed, that the Ward Development Committees (the smallest political and administrative unit in a Chiefdom) shall consist of no more than 10 people of which at least 5 should be women resident in that ward. It is meaningful that since several years this advancement at ward level is the only effective reserved-quota applied to the SL institutions. This is the most meaningful innovation until date. In fact the proposal to raise at 30% the participation of women at all governmental levels (from National to local) has not yet been translated into law³⁴.

Art 5 Sex roles and stereotyping

Sex roles and stereotypes due to different perceptions, expectations and responsibilities for men and women result in inequitable practices against women³⁵.

Already since the phase of education, children are hugely differentiated according to gender roles. The role of mother is considered an enhancement of the condition of a woman³⁶. The role of the house chief is traditionally given to men and the family lineage follows the patrilineal system. The choices of children as far as education and socialization are concerned are done according to their future role in the house and society.

³² CEDAW SL Country Report, 2006, n. 11.1.

³³ The scheme provides for fee free tuition/scholarship for girls who enter junior secondary school in the most disadvantaged regions of the Country (Northern and Eastern provinces).

³⁴ CEDAW SL Country Report, 2011, n 4.1.2,

³⁵ CEDAW SL Country Report, 2006, n. 12.1,

³⁶ CEDAW SL Country Report, 2006, n. 12.3.1.

These codes of conduct based on gender are, particularly in Sierra Leone, reinforced by the big influence exercised by secret societies. The issue of starting sexuality and capacity to marry are subordinated to the belonging to secret/magic groups, who exercise a very strong influence on the sexual and marital life. The belonging to the groups is conditioned to the overcoming of steps and to participation to ceremonies, among which the female genital mutilation is considered a necessary element.

Mutilated women are considered with more respect than the others³⁷. The possible discriminative consequences due to the absence of FGM are at the base of its deeply rooting in the society of Sierra Leone. The practice is reinforced also by being surrounded by secret and obscurity: it is almost forbidden to talk about it, and battles to fight against it find strong opposition from wide fringes of population. Almost all the tribes of SL women have this practice in common. Only among the Creole ethnic group living in Freetown area it is not deeply spread. The answer from the State is practically absent: the absence of ad hoc laws, policies and education strategies against FGM make the phenomenon more difficult to be removed³⁸. The tentative done by the MSWGCA in 2007 to include the elimination of FGM into the Child Rights Bill failed³⁹. The combined interpretation of Section 33 (1) of the Child Rights Acts which forbids torture and inhuman and degrading treatment against children, also the ones due to traditional practices, and the Section 34 (1) of the same Act states that establishes a minimum legal age for marriage are in a certain way interpreted by NGOs as a prohibition of initiating rituals to secret societies, including FGM, to people (girls) under 18 years old⁴⁰. But aside their action of lobbying and some local legislation or Memorandum of Understanding with some Paramount Chiefs, the lack of an ad hoc law is still creating gaps.

In the family, the roles are very clearly determined. The spouse is supposed to be docile and subordinated, payment of dowry and consequent impossibility to repay it from the brides make the women possession of the men and create the impossibility of requesting

³⁷ CEDAW SL Country Report, 2006, n. 12.5.5.

³⁸ Only marginally there is a criminalization of assaults against women and children Under Offence against the Person Act 1861, or CAP 31 on Ordinance to Prevent Cruelty to Children.

³⁹ CEDAW SL Country Report, 2011, n. 5.1.4.

⁴⁰ CEDAW SL Country Report, 2011, nn. 5.1.6, 5.1.7.

divorce from the side of the female spouse⁴¹. During the marriage, the decision making power is in the hands of the husbands, that administrate also the access to family planning, and health services. Early marriages are diffused and seen as a possibility to solve difficult economic situations⁴².

The gender stereotypes, despite the Constitutional guarantee of freedom of expression guaranteed to everyone, are also presently confirmed at mass-communication level. Press and television continue giving a stereotypical image of the woman at home and perpetrate the idea of jobs traditionally reserved for women.

Family Life Education has been introduced in primary school in 2000 and takes care of the teachings of parents regarding the sex and gender roles.

The culture of silence characterized the GBV and the domestic violence with the prevalent tendency of solving the fights inside the domestic walls.

The three gender bills (Registration of Customary Marriage and Divorce; the Domestic Violence and the Devolution of Estates) passed in 2007 by a Parliamentary law⁴³. The domestic violence act of 2007 was enacted, marital rape is now an offence. The two bills on sexual offences and matrimonial causes are still in the phase of drafts⁴⁴.

Big commitment, despite the lack of a specific law, has been dedicated on sexual offences, in sensitizations, lobbying and GBV Committees⁴⁵.

The institution of Family Social Units (instituted in 2003, to be based in the police stations, in order to enhance the coming out of women victims of sexual or domestic violence, and to assist them) and their reinforcement and spread after 2007 has not yet reached satisfactory results. Aside the traditional aversion that police acted against GBV cases, the answer from the judicial power is really limited. There is a big gap between the number of cases raised and of those which arrive to a Court⁴⁶. Also very few cases among those arriving to Court are successfully prosecuted: lack of finances, of motivation and of real possibility to investigate blocks the investigations. In rural areas the patriarchal style does not allow the Courts to conduct a proper work.

⁴¹CEDAW SL Country Report, 2006, n. 12.8.1.

⁴²CEDAW SL Country Report, 2006, n. 12.9.1.

⁴³CEDAW SL Country Report, 2011, n. 5.2.1.

⁴⁴CEDAW SL Country Report, 2011, n. 5.2.2.

⁴⁵CEDAW SL Country Report, 2011, n. 5.2.5

⁴⁶CEDAW SL Country Report, 2011, n. 5.3.2

ART 6 Suppression of exploitation of women

The adoption of the Human Trafficking Act in 2005 and its enforcement through the creation of National Task force, Secretariat anti-trafficking and a collaboration with the International Organization of Migrations, despite the positive proclaims done immediately after the promulgation of the act, records still a few successful prosecution of offenders.⁴⁷ Some of the stereotypes have been overcome (consent and past behavior of the victim is considered irrelevant) and a clarification of the conditions which concretize exploitation⁴⁸. On the practical side, the Courts are not yet able to prosecute these matters and in several cases they are solved between the house walls⁴⁹. The fight against prostitution is still far to produce results. The connection with the poverty due to the recent war and the consideration of the body as a manner to earn money makes the resort to prostitution a tool to survive⁵⁰. Out of that, on the treatment of the responsible, the prostitute is still seen as the only punishable responsible of the practice, and the clients are only marginally considered guilty⁵¹.

PART II. In the following articles, the Part II of the Convention, a common characteristic is the presence of theoretical guarantees at Constitutional and legislative level, but on practical side, the absence of concrete possibility to exercise the described rights.

ART 7 Equality in political and public life

According to sec 31 of the SL Constitution the right to vote and to be voted is guaranteed to all citizens above 18 years of age. The barriers to equality in political life are mostly practical (internal party operational modalities) and psychological (lack of confidence, dislike of the culture of politics from women). Despite the creation of a

⁴⁷CEDAW SL Country Report, 2011 6.5.

⁴⁸According to Human Trafficking Act Section 2: state of slavery, forced labor or services, keeping a person in state of servitude are conditions that may create suspect of trafficking.

⁴⁹CEDAW SL Country Report, 2011 n. 6.6.

⁵⁰CEDAW SL Country Report, 2011, n. 6.7.2.

⁵¹CEDAW SL Country Report 2006, n. 13.4.3.

Taskforce for Women in Politics (TAFWIP) in 2001⁵², and other initiatives to provide capacity building training for women candidates, the level of representation until 2006 has been very short. In fact, a part of the already mentioned ward quote (50/50), the percentage of women's participation in public life rarely goes over 15%. The representation is slowly increasing at Government and Parliamentary level, with women assigned as Ministers, Deputy Ministries and chairs of Parliamentary Committees⁵³.

But bizarrely, even if in the last elections in 2009 more women run for elections, the economic burdens of the electoral campaign and the change of the representation system, lead to less women having been elected both as Parliamentarian and in local government. The possibility for women to become Paramount chiefs is also hampered by cultural and traditional practices: in certain parts of the Country a woman cannot be Paramount chief according to traditional and customary laws⁵⁴. Recently, the passing of Chieftaincy Act No 10 of 2009, Section 8, makes women eligible to contest for and to become Paramount Chiefs. This provision is nevertheless affected by the clause "when tradition so specifies". Therefore, the women are automatically excluded from competing, if the practice or customary law do not specify for women to contest⁵⁵.

In labor and professional organizations women are holding decision making positions, even if sometimes their small representation is due to the small number of women eligible to these charges. We can see women chairing some Commission at National level (Hr Commission, National Electoral Committee), and the electoral commission has 60% of members who are women. The representation of women as High Court Judges is in 2011 around 60%.

National NGOs are for the 20% headed by woman, and 8,5% of the international Women's organization are actively involved in policy making in SL. The lobbying actions to obtain the quote of 30% of women's representation in all electoral competition and successively of 50% are still pending in front of Parliament in a stage of draft⁵⁶.

⁵² The Task Force has been not enough sustained and it failed. CEDAW SL Country Report, 2006, n. 14.4.

⁵³ CEDAW, SL Country Report, 2006, nn. 14.6.1, 14.6.2.

⁵⁴ CEDAW, SL Country Report, 2006, n. 14.6.4.2.

⁵⁵ CEDAW, SL Country Report, 2011, n. 7.4.1.

⁵⁶ CEDAW, SL Country Report, 2011, n. 7.2.5.

ART 8 International Representation and Participation

Sierra Leonean women participate in international NGOs and International Agencies, and through delegations to international debates and conferences: it must be noted that very often their interventions are limited to fields where women are traditionally committed, in this way highlighting the stereotypical nature of women's carriers⁵⁷. Also the number of women serving as Ambassadors or Heads of Chancery is very low (almost stable during the two reporting phases). There is need for more political will in the assignment of women to international posting⁵⁸.

The percentage of women serving as Officers is as always higher, the shorter the position covered is. The SL government declares that no woman has been denied the opportunity to represent her Country or to participate in the work of international organization: but at the same time admits that family commitments make very difficult for women to accept diplomatic and international jobs outside the home country⁵⁹.

ART 9 Nationality

Women are not any more discriminated from the sect 6 of SL Constitution, which allowed only SL men to give SL citizenship to the newborn. In The Sierra Leone Citizenship (Amendment) Act of 2006 "Person of negro African descent" is now defined by Section 2 of the 2006 Act to mean "a person whose mother or father and any of the grandparents of the mother or father is or was a Negro of African descent." (before, only the patrilineal side was taken in consideration).

Until date women are still discriminated in the possibility to give SL citizenship to the foreign man they marry. Only a SL man (citizen or just born in Sierra Leone) can give citizenship to the foreign wife and to the new born. The opposite is not yet contemplated. Dual nationality (allowing so to a woman whose husband is foreign, to be eligible for the SL citizenship)⁶⁰ has since recently been allowed in the country.

⁵⁷ CEDAW, SL State Report, 2006, n. 15.2.

⁵⁸ CEDAW, SL Country Report, 2011, n. 8.1.1.

⁵⁹ CEDAW, SL Country Report, 2006, n. 15.4.

⁶⁰ CEDAW, SL Country Report, 2006, n. 16.2.

PART III. The articles belonging to the Part III of CEDAW attain to the economic, social and cultural rights. Also here the trend is that formal recognition of equality and non-discriminated, is not accompanied by an effective change in the society. The advantages obtained at educational level and job positions level, are unfortunately made vane by the drop out and the traditional familiar roles which constrain the girls and the women to renounce to terminate the school or to reach high decision making positions in the work.

ART 10 Equality of access to education

The equitable access of education has been since long time under the attention of the SL Institutions at constitutional, legislative and policy level.

SL Constitution provides for gender equality in Section 9⁶¹. The Educational Act was passed in Parliament in 2004 in the direction of increasing enrolment and eliminating gender disparity in education⁶². Several policies have been applied⁶³.

Good results have been obtained by the post war tailored “Rapid Education Program for Primary schools” consisting in the reduction from 6 years to 3 years for completing primary school, particularly addressed to students who could not attend the school during the war. To advance and actualize CEDAW provisions, a big role is still played by the partnership with UN, CSOs, faith based organizations and private institutions. Prizes, awards and scholarships are also given especially to girls, school feeding programs and girl retention incentives are provided.

Recently the efforts addressed a “female friendly environment” through equitable proportion of female teachers in primary schools, a code of ethics to discourage male teachers from having relationship with female pupils and gender sensitive curricula.

⁶¹SL Constitution, Section 9 (1), 9 (2).

⁶²To comply with EFA global plan point 4 and 5.

⁶³Non-formal primary education plan 1992; National Education Policy, 1995; Basic education National Plan, 1995-2000; National education Master plan; national action plan 2003-2015: commitment to freehand compulsory education for all, promotion of counseling and family life education as a strategy to prevent early pregnancies. in 2000 free fee examination at basic and secondary level has been introduced, 2001 national policy on gender mainstreaming and national policy on advancement of women reaffirms women’s rights to education at all levels.

Attention has been given to child mothers and drop out who are targeted in order to be allowed to finish their schooling⁶⁴.

The results obtained are not homogeneous. The efforts are giving appreciable results mostly at lower education level: the enrolment rates for primary schools almost doubled from 2001 to 2005. Nevertheless, higher is the school level, higher is the girls' dropout rate. The enrolment rates in secondary education are not so surprisingly as in the primary. Even if it the tentative of the state to provide access to education is undeniable, the problems still present in rural areas give space to concern. Very short percentage of girls in rural areas finish the secondary school: 2/3 of the women in rural areas have no education; only 1/4 have primary education and only 4% have secondary education⁶⁵.

Technical/vocational education and University level are characterized by a stereotyped division of the courses. Women are particularly enrolled in tailoring, soap making, hair dressing and catering courses. As far as the University level is concerned, managerial duties are reserved to and chosen by men. Women normally prefer to study as secretary and administrators. Also the marks, due to the different distribution of commitment at home, are higher for males than for females.

Even in presence of special schools for physically or mentally disabled people, mostly disabled girls are kept at home, to better take care of them.

An effort is visible in the job orientation addressed to increase the tendency of women's application in fields as engineering, medical and agriculture, that before were reserved only to men⁶⁶; measures as grants are provided solely to women, in order to increase their attendance of secondary school in east and north of SL.

ART 11 Equal rights to employment and employment opportunities

The obstacles to equality also at job level are mostly due to traditional and cultural reasons, stereotypes and concrete situations that govern women's lives in a different way than the common/civil laws. Formally the state does not discriminate against women: equality is guaranteed at Constitutional level (section 8 3a, c, e of the Constitution guarantee every Sierra Leonean equal right to employment and the State is

⁶⁴ CEDAW SL Country Report, 2011, n. 10.1.1.

⁶⁵ CEDAW SL Country Report, 2011, n. 10.1.7.

⁶⁶ CEDAW SL Country Report, 2006, n. 17.7.11.1.

required to not discriminate, on health safety and welfare, equal pay for equal work is a principle to be respected), at National level (the National Policy for the Advancement of Women, adopted in 2001 guarantees women with work at any level of government, equal job opportunities, payment, promotion, appointments and training) and international Conventions have been ratified⁶⁷, the practical results obtained are really very far from the aims of legislation and governmental policies. Already in the “formal jobs”, the one targeted and reachable by the legislations, the discriminations are evident. Until date, no Labor Policy that protects equality of employment and treatment in Employment and occupation has been adopted⁶⁸.

But the biggest problem is represented by the incapability of the law to cover a big slice of the population: in SL women work in fact mostly in the informal sector.

The National Social Security Insurance Trust (NASSIT) guarantees social security, but only for the formal sector workers. Women work fundamentally in family owned business and there are no measures to ensure that they enjoy work related benefits: even if they are denied, there is nowhere to turn to⁶⁹. The work done at home by women is not recognized; out of home their informal role is normally of farming, trading and fishing⁷⁰, petty trading, soap making and tailoring/tie dying. For their tasks in farming activities their job is not quantifiable and normally more concentrated in farming crops than in cash gaining. Retirement is enjoyed only by workers of the formal sector, women working in family owned business are normally not paid and not entitled to pension; pensions to widows or widowers are not payable in the informal sector.

Also the guarantees secured to pregnancy and maternity are more theoretical than practical: pregnant women cannot theoretically be fired, maternity leaves are guaranteed (also in private enterprises) but the leaves are not affordable because they are not paid. Also the child care facilities, sometimes guaranteed, are privately managed and costly.

⁶⁷ ILO Convention 100 on Equal Remuneration in 1968 and convention 111 on Discrimination (Employment and Occupation) have been ratified by SL.

⁶⁸ CEDAW SL Country Report, 2011, n 11.2.

⁶⁹ CEDAW SL Country Report, 2006, n. 18.6.4.3.

⁷⁰ CEDAW SL Country Report, 2011, 11.5.1.

The job environments are not female friendly: the health standards imposed by the government are outmoded and not enforced; sexual harassment in workplace is not considered as an offence by the Sexual Violence Act 2004 and not punished.

On top of that, the attitude in the families does not help the female workers: according to the custom, the man that does not accompany the woman in transfers, in that way, movements abroad the State are not made easy for women⁷¹.

Upon a practical observation of the reality: the women are mostly employed as secretaries and receptionists⁷², clerks and support staff. They are overcharged with the care of the kids and they opt for them and not for the carrier. The women generally lack education and often, since their formation, considering some areas typical for women, they study for low positions, which are considered not essential/priority professions.

ART 12 Equality of Access to Health Care

The issue of equal access to health care is considered by the sector 8 of the SL Constitution which emphasizes that “There are adequate medical and health facilities for all persons, having due regard to the resources of the State”. The lack of resources of the State is the biggest problem to the effective realization of adequate non-costly medical facilities. Analyzing the situation of women related to the access to health care, we could say that “the poorest of the poor are women”⁷³.

During the years, several actions have been undertaken to narrow the incidence of Malaria and HIV/AIDS pandemic⁷⁴, and big interest has been addressed to reproductive health. Family planning has been subsumed under the maternal /child health program (national population policy, population plan of action, national family planning program, policy on sexual and reproductive health). Despite the efforts, a lot must still be done. The biggest problems of discriminations reside at maternal health/family planning level. In fact, aside the poor conditions of the country and the lack of appropriately qualified health care workers, the insufficient supplies of drugs and

⁷¹ CEDAW, SL Country Report, 2006, n. 18.6.2.1.

⁷² CEDAW, SL Country Report, 2006, n. 18.7.1.

⁷³ CEDAW, SL Country Report, 2006, n. 19.8.4.

⁷⁴ (Roll back Malaria Program, response to HIV pandemic, PMTCT, safe motherhood programs and immunization) CEDAW SL Country Report, 2006, nn. 19.3 – 19.7.

equipment⁷⁵ (which characterize also the access to medical services for other diseases), the traditional beliefs hamper the free choice of women to utilize maternal health services.

The situation is worsened by the resistance, in rural areas, against family planning and use of contraceptives: the decision to use modern family planning systems still lies in the hands of the male partner. A woman cannot decide on her own to start using contraception, without being severely blamed by the husband or the family. The level of information and involvement of men about the importance of family planning methods is very scarce.

In this issue, the regional differences (urban and rural areas) in concrete accessibility of the services and in lacking of obstacles of family origin are very evident. The good results obtained in the capital-western area are unimaginable in the rural and provincial ones.

ART 13 Social and Economic Benefits

Until date the social coverage for women in SL is disappointing: only about 5% of women in rural communities are in the formal sector; there are very limited economic and social services targeting women in the informal one⁷⁶.

Concerning the pensions, the widows or widowers are entitled to the amount of 40% of the salary of dead spouse⁷⁷. Discrimination is present: the female spouse widow will receive the pension until she will not start a new marriage, but nothing is said about the male spouse widower who takes another wife⁷⁸.

But the real discrimination concerns the access to loans: despite the Constitutional guarantees of equal access to all opportunities and benefits on merit, the concrete possibility for women to obtain them is mined by the concrete impossibility to acquire property of the land. Their impossibility to reassure the restitution of the credit, does not allow them to accede to the credit system⁷⁹.

⁷⁵ CEDAW, SL Country Report, 2011, n. 12.1.3.

⁷⁶ CEDAW, SL Country Report, 2011, n. 13.1.1.

⁷⁷ Section 45 (1) of the NASSIT (National Social Security Insurance Trust) Act.

⁷⁸ CEDAW SL Country Report, 2006, n. 20.1.1.

⁷⁹ CEDAW SL Country Report, 2006, n. 20.2.2.

The main way for women to obtain loans is informal credit, known as OSUSU⁸⁰. Tentative of installing also a formal credit system has been started. Local institutions and international NaCSA (the state National Commission for social action) guarantee a credit system designed for rural society. Community based chiefdom microcredit has been designed to benefit committees, composed by paramount chiefs, elderly members and women's representatives. Women, in this way, have been almost provided with group loans, trusting more the capacities of the groups to start with new initiatives and to be able to give back the amount of money. Also international and national NGOs are playing a big role in developing microcredit schemes, but the criteria of choosing the beneficiaries, the high interests and the though methods utilized to collect the loans back are not so well evaluated by the Government.⁸¹

ART 14 Rural women

CEDAW dedicates one article to rural women. In general, and in SL in particular, they are the most affected fringe of the population. The violation of their rights has already been examined in the analysis of previous articles, but a comprehensive exam of the violations affecting them can be very useful in order to perceive the multi-discrimination they suffer.

More than 51% of population of Sierra Leone is female and most of them are living in rural areas⁸². Mostly they are committed in subsisting farming, petty trade and management of the family, providing more than 80% of the farm labor for food production, processing and preparation⁸³. The health of rural women generally suffers as a result of frequent childbirth and heavy workload at home and in the farms. Rural women including pregnant and lactating women, work long hours in very stressful conditions.

⁸⁰OSUSU is an informal savings scheme used by women in the informal sector. The members contribute money over a period and distribute it later or contribute over a period and give it to one person. The situation continues until all the members collect their shares. CEDAW, SL Country Report, 2011, 13.4.1, and 14.9.3

⁸¹ CEDAW, SL Country Report, 2011, n. 13.6.2.

⁸² CEDAW, SL Country Report, 2006, n. 21.1.

⁸³ CEDAW, SL Country Report, 2006, n. 21.1.

Health services are not accessible for high costs of services and for the small number of qualified health personnel available in rural health premises⁸⁴. Education on reproductive health and family planning is more accepted by urban women. Despite a good knowledge of contraceptive methods, a very short percentage use birth control methods⁸⁵. The need of the consent of the husbands to accede to family planning schemes and the practice of early/ forced marriages impact negatively on rural women's health. The situation is worsened by the lack of trained and remunerated officials who could represent a starting point in changing the situation.

Despite the policy of the government to educate women in particular and specifically in rural areas⁸⁶, the rate of school attendance is very low in rural areas. Even if countrywide the school facilities are geographically easily reachable, cultural and practical reasons are still producing low attendance. Costs of education, early marriage and early pregnancies, high demand of female work in families, preference of invest scarce resources in son's education are still mining the efforts of the government in that direction. Nearly 60% of the rural women are illiterate. Less than 2% had vocational or College education. Also adult literacy classes, very useful to allow a basic knowledge to take care of their activities, are able to reach only 10% of the rural women⁸⁷.

Rural women have very small access to formal credit⁸⁸. Even when they obtain it, they are often forced to repay the debit back with disadvantageous conditions (i.e. to give back all the harvest). This situation creates a sort of vicious circle of poverty.

Both communal land and customary land ownership prescribe limits for women to acquire land. The communal because sometimes the women should be represented by the husbands, or alone can only lease the land and not over a certain quantity. According to the customary lands, the ownership and capability to give in inheritance is restricted to men.

⁸⁴ CEDAW, SL Country Report 2006, n. 21.2.

⁸⁵ CEDAW, SL Country report 2011 14.3.

⁸⁶ According to the CEDAW SL Country Report, 2006, n. 21: 70% of the women have theoretical accessibility to education (education and training centers are not far from their villages).

⁸⁷ CEDAW, Country Report, 2011, n. 14.6.1.

⁸⁸ Formal credit institutions are against giving credit for an agriculture activity, CEDAW SL Country Report, 2006, n. 21.7.1.

Access to extension services for agriculture remained a pure principle: the low education rate does not allow the women to enjoy information, technical and advisory support; their occupation in agriculture is restricted to survival farming activities⁸⁹. The majority of rural women are self-employed in agricultural activities or petty trading. Social security coverage and benefits are almost inexistent: 87.25% of the rural women are not benefitting of any security scheme.

Up to these problems, some must be added related to access to infrastructure: impossibility of access to safe water, electricity and obstacles represented by the tough transport conditions of the country⁹⁰.

ART 15 Equality in civil law and in civil matters

No discriminations are present under the civil law: women can conclude contracts and administer property on their own as individuals. The Constitution, in the section 23 (1) guarantees the protection of the law to any person, irrespective of their sex. An unjustified and surprising discrimination characterizes the condition to become jurors, because for a women a superior age and more conditions are requested (the justification given is that the female juror shall be literate in English). This difference is a portrayal of a stereotyped consideration that women reach the needed maturity after men⁹¹. Women can also, as a matter of law, become Local Courts Chairmen but they are rare (out of about 300 Local Courts in the 149 Chiefdoms of the Provinces, only four are female Local Courts Chairmen)⁹².

Under customary law, despite no formal discrimination (and equal possibility to sue and be sued in Court for men and women), a substantial different of representation is visible in the Customary Court formation and in their Chairmen sex distribution.

⁸⁹ CEDAW, SL Country Report, 2006, n. 21.9.1.

⁹⁰ CEDAW, SL Country Report, 2006, n. 21.13.

⁹¹ CEDAW, SL Country Report, 2006, n. 22.1.4.

⁹² CEDAW, SL Country Report, 2011 n. 15.1.1.

ART 16 Equality in marriage and Family Law

Since 2007, the enactment of the Registration of Customary Marriage and Divorce Act, the Devolution of Estates Act, and the Child Rights Acts have immensely contributed towards addressing the issues of abuse and discrimination against women and girls in marriage⁹³.

In Sierra Leone the marriage is regulated by Civil, Religious and Customary law.

To different religions belong two types of families: the nuclear, characterizing the Christian/urban, and the extended, typical of Muslims/non-Christian and uneducated families⁹⁴. Anyway, differences are detectable in all the kinds of family and types of regulation.

Nowadays, the consent of the spouse girl is always legally necessary. Under Christian Marriage law, only the consent of the father is requested if the spouse is under 21 years old. Under Customary law a female spouse must have the consent of the parents and when they disagree, the father opinion prevails. Differently, a male spouse-to-be can marry also without the consent of the parents⁹⁵.

Clear division of the roles characterizes the duties of the spouses for both Civil and Customary law: generally the man shall protect and maintain the family and the wife is in charge of domestic works. According to Customary law, the men have sexual rights only for men and women the duty of sexual intercourse. The man can have more than one wife.

Early marriages are now unlawful in SL: Civil and Customary laws request that both the spouses-to-be are at least 18 years old⁹⁶.

The possibility for women to own property is recognized by civil, customary and religious laws and all the discriminations regarding property have been erased⁹⁷. Therefore, also according to customary law, women and men are considered of the same

⁹³ CEDAW, SL Country Report, 2011, n 16.1.1.

⁹⁴ CEDAW, SL Country Report, 2006, nn. 23.1.1, 23.1.2.

⁹⁵ CEDAW, SL Country Report, 2011, n. 16.2.2.

⁹⁶ After the enactment of Section 34 (1) of The Child Rights Act, 2007 and Customary Marriage Act, 2007, Part 11; CEDAW SL Country Report, 2011, nn. 16.3.1, 16.3.2.

⁹⁷ The situation before the enactment of Customary Marriage act were very discriminative for women, they could inherit only if there were kids or if they were going to be married with a brother of the dead husband.

levels in terms of distribution of estates and they can participate in contracts on their own.

For the Mohammedan law, it still remains the possibility for a man to marry more than one woman, but the wives can inherit, according to the length of the marriages, and the respective contribution for the estates.

Rights are recognized to couples who, even if not married, lived together for more than 5 years: the care for the kids is due from the man and they are considered married for the customary law even if no ceremony has been done; women cohabitant are recognized the access to the estate after the death.⁹⁸

Also the end of the marriage is differently regulated by civil and customary laws. According to civil laws, nowadays some grounds to divorce are recognized only for women: bestiality, sodomy and rape⁹⁹.

According to Customary Law, divorce can be asked for different grounds by the husband or wife. Slander, persistent adultery and refusal to convert to his religion are still grounds usable only by men.

Expectations are raising after the enactment of laws according to the registration of marriages and divorces celebrated under customary law.

Final Considerations

The SL State recognizes that the awareness of the population about CEDAW and its contents is really low among all sectors/strata of the society. From the report of 2006, it is clear that there was an expectation for a real political will to create the prerequisite to allow CEDAW to be effectively implemented in the Country. Reading the Report of 2011, the impression is that, at least at legal level, something has been created, also concerning family regulation, but the penetration of the laws and of the CEDAW implementation is still very far from guaranteeing equality.

In my opinion, the very big concerns emerging from the official reports, (mostly the one of 2011), consist in the wrong direction of the efforts taken from the government. The multiplication of legislation and bills, the concretization of some of them only at

⁹⁸ Section 27 of the Child Rights Act, 2007; CEDAW SL Country Report, 2011, n. 16.6.3.

⁹⁹ Section 5 (a), (b) and (c) of the Matrimonial Causes Act.

theoretical level, not accompanied by a serious commitment in terms of budget, holistic actions and a unequivocal direction taken by the state at all levels, from the national to the local, from the capital to the rural, from the western to the eastern areas of the country, in other words: a small attention to the mainstreaming of gender laws at all levels.

1.2.Uganda.

Physical, geographical and political description

The country is nowadays still facing the consequences of an ongoing civil war (not yet formally concluded by peace agreement) limitedly to the Northern Area, even if the authorities speak about a “restored peace”¹⁰⁰. The war is almost not felt in the Southern area of the Country, including the state capital Kampala, while in the affected areas of the North the population lives still in provisional returning camps/villages and the reconstruction of the native villages is uncompleted.

Furthermore, differently from in Sierra Leone, in Uganda there are not only differences between urban and rural areas and between the various provinces, but big separations are due to the persistence of the war setting and to the particular situation of Karamoja: a region with cultural autonomy and that proceeds as isolated from the rest of the Country. Out of the total population of more than 30 millions of people, 51% are women. Almost 90% of the population lives in rural areas¹⁰¹.

The following analysis is a combined examination of the Country Report submitted from the State of Uganda in 2009 and the Shadow Report submitted by the NGO UWONET (Uganda Women’s Network) and the Concluding observation of CEDAW Committees in 2010.

Situation of women in Uganda

According to the civil society organizations, “Equality for the Ugandan women will remain an illusion for as long as the status quo is maintained¹⁰²”

Uganda signed and ratified the Convention in 1985 without reservations. Even if according to the report from the Government of Uganda (GoU) in the last years remarkable formal steps have been done in eliminating the discriminations against women in the country, some areas are still not covered. Despite the State’s optimism and the self-good-estimation of the efforts done in the implementation of CEDAW, on the other side, the evaluation expressed in the Committee’s Concluding Observations and emerging from the Shadow Reports are not so positive.

¹⁰⁰ CEDAW, Uganda Country Report, 2009, n. 5.

¹⁰¹ CEDAW, Uganda Country Report, 2009, n. 4.

¹⁰² UWONET: CSO Alternative Report, 2010, p. 4.

The Constitution of Uganda gives clear guarantees concerning equality; the discriminations against women arises from partial realization of the dictates of the Constitution or are the result of the slowness of the State apparatus, due to a will to maintain the status-quo. In fact, even if expected and requested since 1965 (i.e. for the family regulations), low priority is given to comprehensive legal reforms to eliminate sex discriminatory provisions¹⁰³. Even when they are enacted, it looks still very difficult for laws to be penetrating in areas as family life and gender roles also for the opposition of cultural/religious leaders and other fringes of Uganda's Society.¹⁰⁴ The discriminatory provisions are mostly of customary origin and the law reforms often risk to remain in paper, if not concretely implemented by judges, community leaders, lawyers and CSOs committed in law reforms. Many women continue risking to be left at the discretion of the Courts particularly in family and divorce matters¹⁰⁵.

The in charge Ministry of Gender, Labor and Social Development is very weakened by the lack of human, technical and financial resources. It is one of the least funded Ministries in Uganda¹⁰⁶. The mainstreaming of gender issues at all levels of the governmental policies is put in danger by this weakness¹⁰⁷. At field level, stereotypes and persistence of patriarchal attitudes are strong enough also because combined with a lack of awareness from the women about their rights, particularly in the remote rural areas, where the majority of population of Uganda lives.

Upon an observation of the legislation of the last years, it appears that the differences between urban and rural areas, the concentration of the population in rural areas and the weakness of women amongst that majority, is not enough taken in consideration by the Government of Uganda. Among women, the weakest categories, namely the old and disabled women have been literally left behind in the IDPs camps, while the returning process to the lands of origin started. Their situation makes them particularly vulnerable to GBV¹⁰⁸.

¹⁰³ CEDAW Uganda Concluding Observations, 2010, n. 11.

¹⁰⁴ UWONET: CSO Alternative Report, 2010, p. 2.

¹⁰⁵ UWONET: CSO Alternative Report, 2010, p. 2.

¹⁰⁶ UWONET: CSO Alternative Report, 2010, p. 5.

¹⁰⁷ CEDAW, Uganda Concluding Observation, 2010 n. 15.

¹⁰⁸ CEDAW, Uganda Concluding Observations, 2010, n. 45.

ART 1&2 Discrimination.

The Uganda Constitution defines and forbids discrimination (art 21¹⁰⁹) and prescribes that “Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution” (art 36) and that they must be removed. Nevertheless, on the one hand some laws which offend the principle of equality and non-discrimination are still effective and on the other hand some norms, who are gender neutral, require the adoption of gender sensitive language in order to promote the rights of women¹¹⁰.

The enactment of a comprehensive law to regulate women’s property rights during marriage and at its dissolution (the Domestic Relations Bill¹¹¹) is expected since several years. This legislative vacuum causes wide consequences with reference to the equality of men and women: short recognition of women’s rights and property grabbing against women due to sex remain common phenomena¹¹². The co-ownership of land, even if strongly requested, is still not recognized to women.

The resistances which slowed down the approval of the DRB have religious and traditional/community roots: protests have been raised mostly against new regulation of polygamy; on the other side, there is an active CSOs action to obtain equality also within the marriages regulated by the Sharia law¹¹³.

When problematic laws have been enacted, they still find resistance at judicial level. Since 2004 the Sexual Offences Bill guarantees the possibility to punish the sexual marital assault, with the provision of imprisonment of the perpetrators and economical restoration in favor of the survivors. Unfortunately, the efficacy of the Bill struggles to

¹⁰⁹Uganda Constitution, Chapter 4, Art. 21.”(1) *All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law. (2) Without prejudice to clause(1) of this article, a person shall not be discriminated against on the ground of sex, race, color, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability. (3) For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, color, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.*”

¹¹⁰ UWONET: CSO Alternative Report, 2010, p. 6.

¹¹¹Recently, even without a formal recognition of co-ownership of land, a certain weight has been recognized to the needed consent of the woman, in case of selling of a family land. The disposition is undermined by the acceptance of presumed oral consent given by women (who normally cannot write). CEDAW, Uganda Country Report, n. 17.

¹¹² UWONET: CSO Alternative Report, 2010, p. 7.

¹¹³ CEDAW, Uganda Country Report, 2009, n. 19.

be respected before Courts: even if SGBV is indicated by Uganda Police as the top list of crimes of the Country, the number of cases per year is very low because of the reluctance in reporting from victims. The very vast area of the jurisdiction of the Courts, the corruption of their members and the high legal fees do not allow women to concretely access justice. Another big restraint to justice for women is the overlapping of judicial and traditional methods. For instance, in case of defilement, the parents of the victims solve the situation in a “friendly way”: giving their daughters (victims) as wife to the perpetrator.¹¹⁴

Delays characterize also the effective equipment of the Committees such as the Equal Opportunities Committee and of policies such as the National Equal Opportunities Policy (at 2009 the Committee was still in the state of formation¹¹⁵). Despite the activation of National Plan to monitoring the implementation of CEDAW 2007, the conduction of several awareness campaigns at various level, and the creation of specialized organs (Family and Child Protection Units in the police; HR experts in prisons and in the Army¹¹⁶), the results up to date are very disappointing also because of the delay in the formation of the Units. The above described situation forces to consider the expediting of the law reform process as a priority for the State¹¹⁷ and a clear taking of position from the Government as needed. Although the Constitution proscribes cultures, practices and traditions that undermine the welfare, dignity and interests of women, the Government has never pronounced itself on customary practices, taking a position against them¹¹⁸.

ART 3 Equality in Political, Social, Economic and Cultural fields

During the last years, several norms have been developed by the Ministry of Gender, Labor and Social Development in order to mainstream gender in the various level of government. Training, guidelines for local government and sectors, institution of the gender action subcommittee and insertion of gender mainstream in the Poverty

¹¹⁴ UWONET: CSO Alternative Report, 2010, pp. 9 and 10.

¹¹⁵ CEDAW, Uganda Country Report, 2009, n. 22.

¹¹⁶ The functionality of these corps must all be demonstrated, formed only by men often belonging to the same corps who are supposed to control, or inadequately trained to deal with GBV cases.

¹¹⁷ CEDAW, Uganda Country Report, 2009, n. 27.

¹¹⁸ UWONET: CSO Alternative Report, 2010, p. 9.

Eradication Plan. The local government officials have been requested to insert gender in their district development plan and budgets, and institutional mechanisms have been created to support the gender mainstreaming process. The health and school premises have been made more user-friendly for girls and women, female councilors have been ensured¹¹⁹. Various initiatives have been started to analyze the problems (Gender Concern Analysis; Gender Status Index; Gender Analysis of Poverty Trends) and utilize the data for effective gender responsive planning¹²⁰. Two National Actions Plan for Women have been adopted, to respond to the Beijing Declaration and Platform for Action. Guidelines on the implementation of the plans have been distributed and personnel of other Ministries, private intervention actors and local governments have been trained on gender mainstreaming¹²¹.

Nevertheless, the implementation of these plans has been undermined at national and local level. Mostly at local level, due to the lack of disaggregated data, the incapability of following the guidelines and the bad distribution of resources, many programs implemented did not address women's priority concerns¹²². Sometimes no resources have been effectively dedicated to gender mainstreaming initiatives¹²³. No incentives have been ensured to address stereotypes and prejudices against women, negative cultural beliefs that hinder women's participation.

Also in terms of gender mainstreaming at representative level, most of the political parties do not have quotas for women or resources and training programs to enable women to effectively participate; those who have quotas lack mechanisms for enforcement, monitoring and reporting on progress in this regard¹²⁴.

ART 4 Temporary special measures for accelerating de facto equality

Affirmative actions have been adopted by the Ugandan Government to guarantee special representation of women, youth and disabled people in the Parliament and in the local Governments. The lack of clear guidelines undermined also in this case the

¹¹⁹ CEDAW, Uganda Country Report, 2009, n. 44.

¹²⁰ CEDAW, Uganda Country Report, 2009, n. 44.

¹²¹ CEDAW, Uganda Country Report, 2009, n. 48.

¹²² UWONET: CSO Alternative Report, 2010, p. 13.

¹²³ CEDAW, Uganda Country Report, 2009, n. 51.

¹²⁴ UWONET: CSO Alternative Report, 2010, p. 11.

representation of women in Parliament and several women Councils failed to be constituted at local level¹²⁵.

In 2006 the Equal Opportunities Commission (EOC) was established to monitor, evaluate and ensure that policies, laws, plans, programs, activities, practices, culture, and customs at all levels are compliant with equal opportunities and affirmative action in favor of marginalized groups. Despite the ambitious aims it has neither begun performing its roles and obligations, because of inadequate funding. No single case has been handled by the EOC since its formation¹²⁶.

As it is said in the Uganda Country Report n. 57, "Institutions at central level of the Lobbying groups as National Women Committee work hand in hand with the Government to raise issues concerning women".

Women have been included in the composition of Constitutional commissions. At local level a quota of 50% of women representation is requested in the composition of Water User Committees and Water and Sanitation Committees at community level for women. It is not yet defined the effective result of these affirmative actions¹²⁷.

ART 5 Sex roles and stereotyping

The article 33 (1), (2) and (4) of the Constitution seek to eliminate discrimination against women in the political, economic and social spheres of life. The stereotypes about the different positions of men and women and the patriarchal pattern are anyway still very rooted in the familiar and economic structures of the country. Women are still perceived as weak, poor, illiterate and properties of men. Cultural practices (FGM, widow inheritance, early marriages, and neglect of the girl child and the payment of bride price) still contribute to perorate the women's subordinate status compared to men¹²⁸. Phenomena as restricting women to middle level political positions, preference of boy to girl-child education; expelling pregnant school girls from school without

¹²⁵ UWONET: CSO Alternative Report, 2010, p. 14.

¹²⁶ UWONET: CSO Alternative Report, 2010, p. 16.

¹²⁷ For the youth/women representatives is very hard to define strategies of movement in the recent multiparty parliament situation.

¹²⁸ UWONET: CSO Alternative Report, 2010, p. 18.

corresponding action on boys and relegating responsibility for domestic chores to women and girls are still very common.

A Gender in Education Policy has been formulated by the MOES, showing a big effort in re-writing the educational curricula with a higher gender sensitivity, in providing school stakeholders with tools to make them able to deal with barriers at school, but also at community level that impede to girls the access to education¹²⁹. Few efforts have been dedicated by the government to media campaigns, which have been taken under CSOs responsibility.

The law prohibiting FGM just enacted should be popularized: perpetrators of this practice should be punished and trained on the gender implications and harmful aspects of the practice¹³⁰.

ART 6 Suppression of exploitation of women

The condition of prostitutes (considered by the National HIV/AIDS Strategic plans one categories of most at risk groups) is faced by Ugandan Country with a holistic approach. The Government predisposed prevention campaigns and considering the poverty as one of the causes of prostitution, programs of support of vulnerable groups (formal and informal education, vocational training and legal literacy on their rights) have been addressed to prostitutes¹³¹. Self-advocacy groups providing counseling services have been established.

Anyway, despite all these efforts, still persist wide challenges: 1) the stigmatization of the category and the hostile environment at health service level; 2) the criminalization of the prostitution: the prostitutes are arrested because they are considered to be idle and disorderly¹³².

Currently, the Penal Code proscribes prostitution, targeting only the female prostitutes and not those exploiting their trade¹³³.

¹²⁹ CEDAW, Uganda Country Report, 2009, n. 65.

¹³⁰ UWONET: CSO Alternative Report, 2010, p. 19.

¹³¹ CEDAW, Uganda Country Report, 2009, nn. 75, 76.

¹³² Penal Code Act of Uganda, art. 134.

¹³³ UWONET: CSO Alternative Report, 2010 p. 19.

The Trafficking in Persons Act has been enacted in 2010. Although it does not target prostitution directly, it created sanctions for perpetrators and makes provision for victims, including the prostitutes. Aside of the author of human trafficking, the community members aware of the trafficking and not collaborative with police are also considered responsible for trafficking. Assistance will be provided, also under the form of psychological counseling to the victims.

Unfortunately, also in this circumstance, all these aims are undermined by the absence of a coordinating agency and the lack of skills to identify and intervene against trafficking. The Ministry of Internal Affairs, responsible for implementing the Act was in charge of designing regulation and creating an office to oversee implementation of the Act. Until 2010, no regulations have been disposed and no department has been set up to coordinate and monitor implementation of the Act¹³⁴.

Finally, the criminalization of prostitutes is persistent, and their sole recognition as victims does not help in addressing the phenomenon of prostitution and its causes¹³⁵.

ART 7 Equality in political and public life

The Article 38 of the Constitution of Uganda provides the right to every Ugandan citizen to participate in the affairs of government individually or through his or her representatives. The women in Parliament reached in 2006 the number of 101, the 30% of the total number of MPs. The number of women in more prestigious positions (Ministerial positions, Committees Chairperson in Parliament) is in growth¹³⁶. This improvement of women's representation is also the result of the efforts of the UWOPA, the association of the Uganda Parliamentarian Women, who is pushing for more gender policies in the governmental action¹³⁷ and for several gender oriented bills.

Their action has been directed also to increase the number of decision making people inside the parties. Nevertheless, not all the Ugandan parties are respecting women's quotas and there are not mechanisms to enforce the respect of quotas also in those parties who do require quotas. At local level, quotas systems are operational also at

¹³⁴ UWONET: CSO Alternative Report, 2010 p. 20.

¹³⁵ CEDAW, Uganda Country Report, 2009, n. 82.

¹³⁶ CEDAW, Uganda Country Report, 2009, n. 85.

¹³⁷ CEDAW, Uganda Country Report, 2009, n. 87.

Local Council level, where a third of the seats is reserved to women. Anyway, women are still relegated to marginal positions, and very few women serve in high positions: to the growth of their number does not correspond a better qualitative participation in decision making.

Unequal power relations, illiteracy levels, cultural norms of gender stereotypes and perceptions of women's subordination to men inhibit them to reach representation at high level. In key government agencies, women are considered for secondary positions rather than as leaders, positions with limited mandate/decision making powers and budgets¹³⁸. Overall men are still stereotyped as natural leaders¹³⁹.

The concrete possibility to run for elections is conditioned also by the cost of the campaigns. Women are deterred and inhibited to compete in for elections for the poor socio-economic status of a lot of female candidates. With the voting by universal suffrage, they shall sustain very expensive electoral campaign¹⁴⁰. The innovation of the multiparty election in 2006 has finally disoriented the female movement, not able to reach representativeness in the various parties, and the gender issue has not received relevant attention in the political agenda of the last election campaign¹⁴¹.

Even if initially included in the peace talks in Juba¹⁴², women did not participate to the Juba Peace Talks in 2007. Despite having suffered the war directly or indirectly, they have not been represented through their voice in the negotiation¹⁴³.

Another paradox is the tendency, due to ignorance of rights and the lack of awareness about UNSCR 1325, for women to come back to a status of inferiority after the war, losing the better status and position acquired during the conflict¹⁴⁴.

ART 8 International Representation and Participation

The number of women holding diplomatic position, the number of women with higher positions in UN Agencies has recently improved. The women of Uganda are

¹³⁸ UWONET: CSO Alternative Report, 2010 p. 22.

¹³⁹ CEDAW, Uganda Country Report, 2009, n. 90.

¹⁴⁰ UWONET:CSO Alternative Report, 2010, p. 22.

¹⁴¹ CEDAW, Uganda Country Report, 2009, n. 93.

¹⁴² CEDAW, Uganda Country Report, 2009, n. 98.

¹⁴³ UWONET: CSO Alternative Report, 2010 p. 23.

¹⁴⁴ CEDAW, Uganda Country Report, 2009, n. 101.

particularly visible with position as judge in International Tribunals¹⁴⁵. As often, the women are less deployed to representative roles and more assigned to deputy or lower roles in the diplomatic missions¹⁴⁶. This is due to the process that decides for the representation, which is normally a political male dominated process.

ART 9 Nationality

Good advancements are to be recognized in terms of the abolition by the Constitutional Amendment Act of the need for a woman of the permission of the spouse to be able to expatriate. The normative conceding the dual citizenship is still pending for exam in front of the Parliament.

ART 10 Equality of access to education

The primary education, thanks to the Universal Primary Education Policy and the big efforts of UNICEF, reduced the gap between boy and girls enrolling in school. The secondary education is since 2007 freely provided by the Government. Also in University, efforts have been done to retain the girls, through positive-incentive actions addressing them in particularly (scholarships particularly for girl students, motivation of girls in choosing faculties typically “male”).

Despite some good result obtained, the social conditions continue to hamper girls to start and continue education. The higher the school level is, the higher the rate of drop out goes. Already since primary schools, the stereotypes and preferences reserved to boys, the unfriendly premises, early pregnancies and sexual harassment are the principal reason for girls to leave education¹⁴⁷. Uganda has some of the highest rates of adolescent pregnancy in the world¹⁴⁸. The efforts of the Government are slow; the policies are not fast translated in laws: i.e. the Education Bill is still pending before the Parliament, the projected female friendly school premises have been not been built for insufficient budget allocation.

¹⁴⁵ CEDAW, Uganda Country Report, 2009, n.105 (Special tribunals for Sierra Leone and Uganda)

¹⁴⁶ CEDAW, Uganda Country Report, 2009, n. 106.

¹⁴⁷ CEDAW, Uganda Country Report, 2009, n. 117.

¹⁴⁸ UWONET: CSO Alternative Report, 2010 p. 29.

Looking at the regional setting, in the northern area and Karamoja, the gap between girls and boys receiving education is also higher. Interestingly that in this areas, because of the agro-pastoral needs of the area, the school attendance has been adapted to the needs of cattle herding and of household chores, with promising attendance results¹⁴⁹.

ART 11 Equal rights to employment and employment opportunities

The Constitution of Uganda in its art 40 protects the rights of person in employment, guaranteeing equal salary for equal work done¹⁵⁰. Nevertheless women earn generally less than men covering the same work positions and have less access to income than men. In the formal sector, the salary gaps are particularly high in the private sector (men are paid the double of the women¹⁵¹). Generally, low paid jobs see majority of women as workers¹⁵².

The agricultural sector, characterized by the biggest risk of low return, is composed for the 80% by women. Normally they are informal workers or self-employed. 75% of Ugandan women are employed in agriculture in the rural areas, mostly as unpaid family farm workers. The second largest employer of women in Uganda is the informal non-farm sector¹⁵³, where also mostly of the women are self-employed and exposed to low income risks.

Employment Legislation Act 6 of 2006 provides some regulation against discrimination: the applicability only to certain areas and the possibility of dribbling the content of the norms give anyway reason to big concern. The Act is in fact applicable only for enterprises with more than 5 employees, while the majority of family enterprises are under that threshold of employees. Discrimination is not admitted, but S.6 (4) of the Act provides that “any distinction, exclusion or preference in respect of a particular job based on the inherent requirements of that particular job shall not be deemed to be discrimination”. This clause leaves the door open to discriminations

¹⁴⁹ CEDAW, Uganda Country Report, 2009, n. 120.

¹⁵⁰ Constitution of Uganda art 40 n. 2.

¹⁵¹ CEDAW, Uganda Country Report 2009, n. 125.

¹⁵² UWONET: CSO Alternative Report, 2010, p. 28.

¹⁵³ UWONET: CSO Alternative Report, 2010, p. 26.

against women and the perpetration of gender stereotypes in employment, simply justifying such a choice with better fitting in the position of the men chosen.

Sexual harassment is punished, but the Act punishes perpetrators only if they are the employers or some representatives of them. Furthermore measures to prevent sexual harassment are requested only in enterprises with more than 25 employees. Other exceptions are reserved by particular categories, ruled by for-men-better regulation: to whom the sexual harassment prescription is not applied (i.e. Police, Army, Prison Police)¹⁵⁴.

The general picture of women in the job market is not encouraging: women are only the 30% of the total formal employees in the Country, they work mostly in the informal sector and therefore they are not covered by the non-discrimination legislation¹⁵⁵. On the other side, they are the ones charged by other commitments, due to their gender roles: they are committed at home for 9 hours per day.

It must be finally added that the enforcing of the law is mined by staff and resource constrains. Even innovative measures addressed i.e. to allow mother breastfeeding and against harassment are not effectively guaranteed at job places¹⁵⁶. Breastfeeding is not effectively guaranteed, beyond the maternity leaves period: even the recent enlargement of the maternity leaves from 45 to 60 days, is scarcely meaningful, considering that after that date, the possibility of breastfeeding at work is not any more effectively ensured¹⁵⁷.

ART 12 Equality of Access to Health Care

The high rate of teenage pregnancies and high rate of VAW in various forms in Uganda were the biggest concern of the CEDAW in the nineties. The concerns have still reasons to be maintained nowadays. The health maternal sector, for example, is currently underfunded due to the distribution of the budget in the wide health sector. Despite an enhancement of the general health budget, only 0.2% of the required amount has been put at disposal to safe motherhood needs. Furthermore, politic choices are determining

¹⁵⁴ UWONET: CSO Alternative Report, 2010, p. 32.

¹⁵⁵ CEDAW, Uganda Country Report, 2009, n. 125.

¹⁵⁶ CEDAW, Uganda Country Report, 2009, n. 127.

¹⁵⁷ UWONET: CSO Alternative Report, 2010 p. 33.

the under budgeting of motherhood related health services (i.e. HIV/AIDS prevention is receiving the maximum attention possible at the expenses of other sectors).

Women in rural areas, both in Northern Region and in Karamoja are additionally suffering for the difficulties in reaching the health centers and for lack of medicines, and trained personnel.

Family planning is a priority for the Country, being Uganda the third fastest growing population of the world¹⁵⁸ and it is supposed to be one of the first fastest growing population in some years¹⁵⁹. The lack of information and awareness, the weak premises system is furthermore worsened by the opposition of the husbands against family planning methods: the decision power is mostly in the hands of the family males. Only 1/5 of married women utilize birth control methods¹⁶⁰.

The power balance between men at women puts also women more at risk of HIV/AIDS infection: their negotiation power in having safer sexual relationship is low and practices such as inheritance of the widow by the male relatives of the family is still spread in the Country. Furthermore women are generally more vulnerable in war and post conflict assets.

SGBV is still a major HR and health problem in the Country. Women are generally subjected to several forms of violence (60% of women suffered violence; 40% suffered sexual violence)¹⁶¹. Several are the factors: low socio-economic status, discriminatory laws and cultural values, practices and attitudes regarding women in marriage (polygamy, payment of bride price, etc.).

In conflict affected regions a factor of the women's vulnerability is represented by the incapability of enforcement of the law for the weak presence of the State.

In front of such a dramatic situation, the slowness in creating sensitive gender legislation must be pointed out¹⁶². All the efforts at governmental level stuck normally for long time in front of the Parliament. Most of the burdens are now left, especially in the war affected/rural areas, to the international development interventions, through

¹⁵⁸ CEDAW, Uganda Country Report, 2009, n. 144.

¹⁵⁹ UWONET: CSO Alternative Report, 2010, p. 33.

¹⁶⁰ UWONET: CSO Alternative Report, 2010, p. 37.

¹⁶¹ Demographic and Health Survey, Uganda, 2006.

¹⁶² CEDAW, Uganda Country Report, 2009, n. 169.

sensitization/awareness and self –consciousness campaigns. The gender sensitive issues are also mined at operational level by not-victims-friendly attitude of police officers and health personnel, who are supposed to be the first supposed helpers of the women/victims¹⁶³.

A law against FGM after long pending in front of the Parliament has been enacted in 2010. After good result of the awareness sensitization (in some region the practice has decrease from 80% to 10% in the last 15 years) and behavior change projects, it must be observed how the enforcement of the law can give a help in the elimination of the practice¹⁶⁴. I have the perception that according to the government (as far as emerges from the report) the fight against FGM has been almost won, that it is a practice almost abandoned in the Country. Major concerns are expressed by CEDAW and by CSOs in their shadows reports.

ART 13 Social and Economic Benefits

According to the Country Report, “Poverty in Uganda has predominantly female face”. 31% of the Ugandan population lives below the poverty line. The majority of this population is constituted by women¹⁶⁵. Their situation does not allow them to accede economic and social benefits in order to overcome their difficulties and improve their status. It is a sort of vicious circle: being generally not entitled to own land, they are consequently denied free access to capitals through bank loans (difficult to be obtained, without guarantees, mostly constituted by land). Additionally, because of the illiteracy and lack of information they are also not able be further skilled and improve their business opportunities: it is very hard for them to accede skill tools which can empower them to choose alternatives to the survival farming.

The biggest developments made by the State are represented by devolving attentiveness on how poverty differently affects women and men: gender inequality has been recognized as a key poverty issue, causing both deprivation and inefficiency¹⁶⁶. The

¹⁶³ CEDAW, Uganda Country Report, 2009, n. 173.

¹⁶⁴ UWONET: CSO Alternative Report, 2010 p. 37.

¹⁶⁵ CEDAW, Uganda Country Report, 2009, n. 177.

¹⁶⁶ CEDAW, Uganda Country Report, 2009, n. 179.

gender perspective has been integrated in the existing poverty reduction policies¹⁶⁷. As a result of this inclusion, several positive actions towards women have been undertaken, encouraging cooperatives and facilitating a bigger awareness and reliability of women and women's groups.

In this line a big merit must be recognized to international and national CSOs. They are the engine of promotion of the advancement of women in the informal sector, and they enhance and facilitate the organization of women in groups, in order to build on their self-consciousness and to make them more reliable as receivers of bank loans¹⁶⁸.

ART 14 Rural women

The majority of poor people, including women, live in rural community¹⁶⁹. Starting from this point, recently, the Government of Uganda put in place gender mainstreaming policies in various sectors, targeting particularly rural women

In the agriculture sector, several existent disparities have been targeted¹⁷⁰: distribution of resources according to the gender, the division of the roles in production (women focuses on the food production, men are normally responsible of cash crops), multiple roles of women in production and their higher workload compared to men¹⁷¹.

These innovative policies, focused on better distribution of roles and resources in agriculture, encountered strong resistance in cultural practices, which do not allow women to own land, and were represented by impossibility for women to really debate with men. Here the discriminations are still consequences of differences in decision making power of women and are not faceable simply with co-ownership or numerical representation in committees or farming bodies.

In the education sector, the state has been committed in providing adult literacy and numeracy skills, particularly targeting women over 15, with no or low education; also these policies have just slightly alleviated the critical situation of rural women: the difference in the rates of men and women is still very high.

¹⁶⁷ CEDAW, Uganda Country Report, 2009, n. 178.

¹⁶⁸ UWONET: CSO Alternative Report, 2010, p. 42.

¹⁶⁹ CEDAW, Uganda Country Report, 2009, n. 186.

¹⁷⁰ National Agricultural Advisory Service (NAAS).

¹⁷¹ CEDAW, Uganda Country Report, 2009, n. 188.

Despite the efforts made by the State of Uganda in providing core medicines and more health centers, the private clinics are still to be preferred in terms of reliability: distances and attitude of the personnel are still more affecting women than men¹⁷².

Rural women are 79% of the Ugandan Labor force and their access to credit is really low. Micro Finance Institutions concentrate their attention to commercial activities in urban areas, leaving the credit in rural areas characterized by the burdens of high interests and short periods for restitution. The sector is almost for all covered by international NGOs operating in Micro crediting¹⁷³.

In general, also the efforts made to remove the patriarchal pattern rooted in the rural areas are implemented mostly by CSOs and are limited to awareness campaigns, sensitization, information and other behavior change initiatives.

ART 15 Equality in civil law and in civil matters

The Constitution of Uganda provides for non-discrimination guarantees in art 50. The guarantees can be claimed in front of Courts of Uganda and the Constitutional Court is in charge of repealing the discriminating norms. According to the Uganda Country Report, big commitment in bridging the gap between the judicial machinery and the poor and marginalized, mostly women and rural population have been put in place in the last years¹⁷⁴.

The geographical delocalization of Courts has anyway only slightly helped women in Northern Uganda to have a better access to judicial premises and to reduce the case backlog¹⁷⁵. The lack of trust and satisfaction with the Courts is mostly due in rural areas to high cost of litigation, delay in implementing the gender access strategy and the lack of preparation of focal points.

Litigations regarding child maintenance, domestic violence, marital disputes and land disputes can be brought before Local Council Courts (LCCs). Even if more affordable

¹⁷² CEDAW, Uganda Country Report, 2009, n. 197.

¹⁷³ CEDAW, Uganda Country Report, 2009, nn. 198-200.

¹⁷⁴ CEDAW, Uganda Country Report, 2009, n. 206.

¹⁷⁵ CEDAW, Uganda Country Report, 2009, nn. 207, 208.

for poor women, these Local Council Courts are characterized by bias and discriminative practices against women¹⁷⁶.

The situation is still in need of a real implementation of Gender in Justice, considering that also the ideas of providing women with legal aid lack of general and frame worked plans and implementation. The delays in realization are also undermining the plans¹⁷⁷.

ART 16 Equality in marriage and Family Law

The women's right to have a family is undermined. Some reasons of concern are still present in the Country, concerning the marriage and divorce situation. Multiple marriage regimes apply, practices such as bride price, early marriages and polygamous marriages are still common, the general inheritance, divorce and family situation create concerns to the Committee¹⁷⁸. In other words, the status of women during marriage and its dissolution is still characterized by a position of subordination to men. The women's right to have a family is undermined by these cultural practices¹⁷⁹. Their being considered as possession causes the denying of their right to claim to their children.¹⁸⁰

The equality in marriage and family life can potentially be enhanced by the enactment of the Domestic Relation Bill, still pending in front of the Parliament¹⁸¹. Some pronunciations of the Constitutional Court must be pointed out, in repealing discriminatory sections of the Divorce Act which required different grounds for men and women in requesting the divorce (2003). The Constitutional Court nullified also Criminal Adultery and some discriminatory aspects of Succession Act. Except these improvements at judicial level, it is undeniable that laws who are supposed to touch sensitive relationships (particularly in the family environment) are always the most slowly considered in Uganda. Aside of the Parliament attitude, also MGLSD and other government agencies, even if aware of the barriers to eliminate these practices contrary

¹⁷⁶ CEDAW, Uganda Country Report 2009, n. 210.

¹⁷⁷ CEDAW, Uganda Country Report 2009, n. 217.

¹⁷⁸ CEDAW, Concluding Observations, 2009, n. 47.

¹⁷⁹ UWONET: CSO Alternative Report, 2010, p. 44.

¹⁸⁰ UWONET: CSO Alternative Report, 2010, p. 44.

¹⁸¹ CEDAW, Uganda Country Report, 2009, n. 219.

to CEDAW are inert. The burden has also in this case been left to CSOs and women organizations in Parliament¹⁸².

Final conclusions

In my opinion, the Government of Uganda puts a lot of efforts to answer to the concerns of CEDAW Committee, without having really present the real situation present in the Country. Some bills, which are considered the most important, are still pending in front of the Parliament. Some open doors to allow lawful discrimination are present not at Constitutional level, but at legislative one. The interventions of the Constitutional Court are relatively recent. The multiplication of policies and strategies is not accompanied by enhancement of mechanisms. Commissions, even if described as largely innovative, have not yet been constituted, after years of legislative creation. The budget un-funding of the line Ministry is very evident.

The paradigm of the stativity of the Uganda State is clarified, as already several times said, at Matrimonial level. The opposition of the cultural and religious components appears stronger than the government efforts.

Excepting some intervention ad-hoc for education in Karamoja, this province and the northern area are not considered with particular norms as they would deserve to be, even if a big part of the men and women suffering for hunger, poverty and connected discrimination live in these areas.

¹⁸² UWONET: CSO Alternative Report, 2010, p. 44.

CHAPTER 2. Effectiveness of CEDAW

General consideration on CEDAW's work.

Following the examination of the implementation of CEDAW in Uganda and Sierra Leone, I think an examination of the more general questions regarding CEDAW's effectiveness and its penetration in societies and family is now due.

After more than 30 years since the adoption of the Convention, and with only very few countries out of 192 which did not ratify it¹⁸³, we could say that CEDAW is today (June 2012) practically universally recognized and respected. How true is to say this? Is the enormous/ almost universal acceptance around the Globe *per se* a sign of respect of the women's rights? Could we say that at least the base principles are accepted throughout the whole world?

Is CEDAW too ambitious?

CEDAW is a very ambitious text. Not only because it addresses both *de jure* and *de facto* discriminations, (art. 2 the States must act *without delay and using all appropriate measures*"), but also because it wants to "enter in the family" (regardless of their marital status CEDAW art.1 and art. 16 CEDAW) and in the cultural context, "*which cannot represent a justification for the non-compliance with the Convention principles*". It is the only international human rights Convention which recognizes the rural women as in need of particular consideration¹⁸⁴, highlighting their rights to have equitable and secure access to land. Also implicitly, CEDAW, with its very open clauses (it targets all forms of discriminations against women in social, economic, political and "*in any other field*" (art.1) theoretically covers also newly discovered forms of discrimination against women, committing states to act also for the emerging ones.

After the examination of the situation resulting from the last country reports in Uganda and in Sierra Leone, the impression is that the implementation of the Convention is formal and weak. In general human rights treaties are weak. UN High Commissioner

¹⁸³ Neuhold, 2009: Among the States which have not yet ratified CEDAW, (not justified by religious reasons) an excellent not ratifying State are the USA. EU is expected to sign the CEDAW after the Lisbon Treaty.

¹⁸⁴ International Land Coalition, 2009.

for Human Rights Navi Pillai defines in a very realistic way the strength of human rights treaties: “A weak treaty body system affects the UN human rights machinery as a whole ...as well as the global human rights movement¹⁸⁵”.

Along with all the other Human Rights treaties, CEDAW is not void from this weakness: it suffers from the inapplicability of sanctions to the non-compliant states. It has been defined as a law without sanctions¹⁸⁶. Despite having been ratified by almost the whole international Community, we cannot affirm that discriminations against women have been abolished. This can be read (the other side of the coin) as a sign of total ineffectiveness of the treaty in its present form¹⁸⁷. Furthermore, the possibility to ratify with reservations allows furthermore several states not to apply even core parts and principles of the Convention. Its Optional Protocol designed in 2000, even if innovative, because it allows a system of individual petition, has not reached the same level of diffusion and ratification reached by the Convention. All these factors leave the scholars and the practitioners wondering about the real effectiveness of the Convention, especially after the 30 years of validity of the treaty¹⁸⁸.

Positive effects of CEDAW

Certainly CEDAW represents a comprehensive tool in the hands of all the women’s movements protecting human rights¹⁸⁹. Through CEDAW they are morally and politically legitimated. Through the necessary provision of the periodical country review, all the NGOs working in the country have room to evaluate and further claim for better implementation. CEDAW (together with Optional Protocol and General Recommendations), together with the work of hundreds of women’s movements and organizations managed to draw attention to violations and managed to define them as violations of human rights. They have used CEDAW as a basis for their demands and to start fights against apparently untouchable traditions. In summary, CEDAW, despite the very big number of reservations, has the impact of legitimizing standards of right or

¹⁸⁵ OHCHR.

¹⁸⁶ Engle Merry, 2003 p. 943.

¹⁸⁷ McCabe, 2000 p. 431.

¹⁸⁸ Stasewska, 2009, hopes for a better satisfaction and wishes a better situation in the 40th anniversary of CEDAW in 2019.

¹⁸⁹ Acar, 2009, p.1.

wrong for women's rights¹⁹⁰. Several government-civil society cooperation on women's issues started in occasion of the preparation and filling of the CEDAW country reports¹⁹¹.

The communication and networking possibilities given to the women's movements is really impressive. It is also impressive that quotas for women representation in government and local institutions are guaranteed; ministries of gender responsible for women's issues have been established all over the globe.

Clearly the CEDAW produces effects, even only as lobbying force, and even if some of its norms have been accepted with reservation. Accepting the CEDAW with reservations establishes anyway a contact between the country and the international community / Committee and puts that state in any case under analysis. Even if a lot of times the reservations have been put against the core values of the Convention, undermining the value of its spirit, those values have in some way been accepted. The strategy /policy are that is better having a state which is reserving rather than one that is "out of the game¹⁹²". The reservation should be seen as a way of engagement of all cultural traditions in the path towards the respect of HR. Accepting that States can hold reservations is consistent with the universal recognition of differences and pluralism¹⁹³. Differently, a too restrictive request of total adherence could have brought to an elitist treaty and to a division in blocks¹⁹⁴.

On the other hand, several states whilst not expressing reservations, have behaved in ways which cannot be considered in line with the Convention they have completely ratified. Even without reservations, several Constitutions (just consider the analysed Sierra Leonean) remove from the jurisdiction of the convention broad areas which traditionally are considered private and not liable to be regulated by law.

CEDAW is able to provoke effects even with the only fact to be accepted, even if the acceptance has been done merely to avoid international blame and with the sole aim to be inserted in the "good" list of countries respectful of women's rights, even if there

¹⁹⁰ Id., p. 7.

¹⁹¹ Engle Merry, 2003, p. 943.

¹⁹² Engle Merry, 2006 (c), p.

¹⁹³ Subotic, 2005.

¹⁹⁴ Id.

lacks a real willingness to comply. Looking at the phenomenon from another perspective, it is true that to involve a country is always a good way of sensitizing its government, but at the same time to have countries which do not have the willing to comply, but that formally are in good standing (and ratified) can diminish the meaning of the Convention¹⁹⁵.

Failures of CEDAW

Looking upon a more substantial point of view, women are still the most who suffer for multiple discriminations. Re-phrasing the art. 1 of CEDAW, I would like to emphasize that they suffer “all the discrimination due to race, religion, class, opinion”, and on top of that, more than men are discriminated or more disadvantaged with discriminatory gender roles: for the only fact of being women.

Despite the indivisibility of HR, in several cases the effects of CEDAW have been only formal, and mostly on civil and political rights of women, without having real effects on the social, economic and cultural rights of the interested population and women in particular.

The *de facto* implementation of the Convention, despite the very ambitious principles and intentions, has not been realized.

I would like now to very briefly describe the failing of functioning of the reporting system. There are several ways for one state to elude the surveillance exercised by the report: late reporting, failing to present a report, superficial answering or tentative to evade the question, reaction to the recommendation with very generic promises¹⁹⁶.

Moreover, the particular topic and the traditional perception (confirmed also during the colonial period) according to which the family issues are not governable by the States, gives more strength to the barriers and oppositions to CEDAW’s implementation. The non-compliance to CEDAW is in several cases not only justified through lacking of resources, but the traditional noninterference of the States in female issues creates a big resistance to the women’s rights application. Women’s rights are the rights that are normally overridden mostly in the private sphere, from private citizens, husbands and

¹⁹⁵ Shin, 2004.

¹⁹⁶ Engle Merry 2003, p. 958.

work chiefs and not only by the State. Traditionally the interference of the State in the relationship between citizenship has been considered more difficult than the regulation of the action of the States¹⁹⁷.

Other complaints concerning CEDAW are related to the approach, too much conditioned by European/North American standards and principles. The secular and the individualist approaches are taken for granted in some societies and it is not possible to extend them universally¹⁹⁸.

Unsex CEDAW

One of the critiques that has been made of CEDAW concerns the approach and the objective of the Convention. It is concentrated on discrimination against women. The focus of CEDAW is on women and not on gender inequalities¹⁹⁹. According to a former member of CEDAW, in the Convention is “clearly ruled out the permanent maintenance of unequal and separate standards for sex²⁰⁰”. It concentrated on women as victims. Doing so, the binary men women and the consequent discrimination are underlined rather than eliminated. The traditional roles and the sexist understanding of the term “women” are confirmed²⁰¹. As part of a binary with men they appear as servant, mistress, wives and mothers. As mothers and wives, they are in need of protection: they are more object than subject. Also considering the masculine formal situation as a standard to be achieved, it would imply that the women are starting from an inferior position.

Considering the women as one category, as they are a minority²⁰², the various differences between women get lost. Women are not the same in different countries, and broad differences are also present in the various classes of women living in the same countries (western/Asian, developed/developing, urban/rural). Making so, we risk not valuing the socioeconomic factors that condition and contribute to the relationship between women and the society.

¹⁹⁷ McCabe, 2000, pp. 425- 427.

¹⁹⁸ Andrews, 2003, p. 610.

¹⁹⁹ Rosenblum, 2011, p.1.

²⁰⁰ Acar, 2009, p. 4.

²⁰¹ Rosenblum, 2011, p. 13.

²⁰² Rosemblum p. 26.

Furthermore talking only about women, the Convention divided and moved the women's rights out of the concern of the Human rights. To react to this marginalization, the question of whether women's rights are human rights was raised loudly in the early 90es.

The concentration of CEDAW towards a group (women) and not towards the discrimination impedes the consideration of the possible role of men. They are not only the perpetrators, but to eliminate discrimination they must be included in the design and implementation of remedies. Without men a lot of achievements in the battle for gender inequalities will remain unrealized. They are to be considered allies²⁰³. If women should not be only considered as victims, it entails that men are not to be only considered as perpetrators. In several cases they are the direct perpetrators of violence against other women, but they can be the agent of changes.

To bring back CEDAW together with the other HR treaties, it should focus on gender, a problem that affects everyone life and not only the orbit of women²⁰⁴. Unsexing CEDAW can produce another important, large scale result: it can help in identifying the protection of women's rights as a problem/responsibility of all and as a human right question for the whole community²⁰⁵. Also in terms of effectiveness, if a problem is considered as owned by the whole community, its solution can be seen as a benefit for all and arouse more satisfaction²⁰⁶. In this direction, the moves made in the last decades are appreciable. The perspective of the international women's rights started moving from women's issues to gender issues and from women's rights approach to gender mainstreaming.²⁰⁷

²⁰³ Rosenblum 2011, p. 29, 49.

²⁰⁴ Id, p. 35.

²⁰⁵ Id, p. 65.

²⁰⁶ An- Na'im, 1990, p 336.

²⁰⁷ Acar, 2009, p. 6.

A big barrier to human rights implementation: the private sphere.

Some difficulties concerning the implementation of CEDAW are not only due to wrong approaches or to a too selective focus. The struggles in implementing women's rights are also due to the nature of these rights and to the relegation of the women's rights in a sphere where they are more difficultly enforceable. In fact, despite the CEDAW's declaration to intervene also in the family²⁰⁸, such intervention is still hampered.

Despite the fact that the majority of violations of women's rights happen at the hands of private enterprises or private people and not from the state, the private sphere is traditionally regarded as out of pertinence of the international law: it traditionally governs the relationship between states and individuals²⁰⁹ (the so called public sphere).

So it is left to the single states to regulate the family and the private life issues. Several times, the states (as seen also in the analysis of Sierra Leone and Uganda) encounter big internal obstacles in entering these private spheres. Religious and traditional leaders claim that they are under their jurisdiction and do not want interference. This tendency to divide spheres has different background and can be the legacy of several pre-existent situations. In several cases it is the result of colonialist order, which wanted to guarantee that the family and cultural life could have been left under the jurisdiction of the local authorities, without interfering with them²¹⁰.

The division of public and private sphere is a division that the governments created and that they can be moved from them²¹¹. It is an artificial construction that has been utilized to marginalize women²¹². They create the separation, modify the sides and can increasingly invade the private sphere. The moves of the demarcation between private and public sphere is a political process, conditioned by race, power and gender relationships. Regulation of the marriage, even when the decision is not to regulate it, is a demonstration that the border is movable.

²⁰⁸ Theoretically this division between private and public sphere has been targeted by CEDAW through the art 2, which imposes the duty to states to correct discrimination against women in the private life. 10 which talks about equality in education and 16 which ensures equal rights in marriage and family life.

²⁰⁹ McCabe 2000, p. 427.

²¹⁰ Kane, Onyango, Tejan-Cole, 2005, p.5.

²¹¹ McCabe, 2000, p. 427.

²¹² Id, p. 428.

Implementation of CEDAW depends on the willingness of the state to intervene in and moderate these spheres. In several occasions the willingness of the state is to leave these areas to traditional leaders and not to intervene in their jurisdiction.

The Economic, Social and Cultural Rights of Women

States try to comply with CEDAW's dictates in the easier and showier way: protecting the civil and political rights. Despite the justiciability of social and economic rights, the first attention of the States is normally focused on the civil and political (at least in the states I have examined). If we consider that the elimination of discrimination against women cannot leave aside their economic and social empowerment, the equality pursued by the interventions of the state only at political and civil level are just formal.

In order to show commitment on the empowerment of women, quotas and freedoms are officially guaranteed to all citizens, without a real and productive commitment in solving the background social and economic problems. Sierra Leone and Uganda have quotas at national and local level and Ministries of gender or of social affairs. On the other side women cannot accede them because of lack of economic resources and education, the Ministries are not put in the conditions to function properly and their voice is not heard at Parliamentarian level.

In this field the lack of enforcement mechanisms from CEDAW is very visible.

CHAPTER 3. Harmful practices and culture

Culture as others'

As already mentioned, there are several problems in not managing to merge international human rights discourse and the traditional/cultural values present in several societies.

I think that an interesting point of view has been raised by the Special Rapporteur on Violence Against Women, followed by some scholars, in her report to the General Assembly²¹³. She indicates the focus of the problem in the “othering” approach utilized by both the international activists and the parties of the confrontation when approaching with the “culture”.

Culture is defined as the “cumulative creation of human beings who transforms individual into organized groups and gives these groups an almost indefinite continuity²¹⁴”, or “the total sum of people’s way of life²¹⁵” or again “the totality of values, institutions and forms of behaviors transmitted within a society, as well as the material goods produced by a man and a woman²¹⁶”.

The human rights advocates tend to consider the cultures as belonging only to minorities or to people living in developing countries. When they think of culture they always think of culture out there²¹⁷. It seems that western countries are void of cultural practices²¹⁸. The same phenomenon has been observed for metropolitan/urban centres counterpoised to rural areas. These settings (the urban ones) have been identified as void of cultures and traditions. The cases of violence or harmful practices present in the non-affected-by-cultures-settings have been justified as mere manifestation of individual illness/craziness and not as imputable to culture.

Also the representatives of the developing states, mostly when solicited about their compliance with international Treaties and CEDAW in particular, consider cultures and

²¹³ Ertrük Yakin, 2007.

²¹⁴ An Naim, 1990, p. 334.

²¹⁵ Njogu, Mazrui, 2012, p.1.

²¹⁶ An Naim, 1990, p. 332.

²¹⁷ Andrews, 2003, p. 613; Ertrük Yakin, 2007, n. 49.

²¹⁸ Ertrük Yakin, 2007, n. 33.

tradition as something belonging to others. The others are in this case, the poor people mostly living in regions where the law is the customary one.

The justification for this last discrepancy is easy to be described. We must note how the states use othering to justify themselves from not complying with the international women's rights standards. The excuse that several institutions utilize is that they have done their work and the problem is elsewhere²¹⁹, belonging to others. The problems reside in the untouchable traditional culture, and not in the non-compliant state²²⁰.

The countries of the south (in bigger part) utilized in several occasions the culture as the keyword to avoid interferences from the western countries, rejecting international standards of HR, with asserted risks of loose of the cultural identity.

Both entities at national and international level, developed and developing states, even if aiming at different objectives, define the culture with very similar characteristics: culture is treated as distant, as a group of traditional and ancestral norms since always there, immutable and monolithic, culture as something not belonging to them.

Culture as harmful practices

There is also another misleading approach. The human rights discourse, even if in good faith, with its challenge against harmful practices embedded and rooted in culture, made an identification of culture only with one expression of it, only with a part of the whole: the harmful practices. Culture became only associated with harmful practices. This identification/correspondence of cultures with harmful practices, not evaluating the differences and the positive aspects at their internal contributes in creating the block and the rejection of the culture.

With this partial view, all the inputs and values of defending human rights present in the traditional cultures are not taken in consideration. The tentative of reinterpreting for example the Quran according to its primordial meanings, in order to find there the legitimacy to the equality between men and women, or the different currents and disagreements and all the movements of women's against patriarchal structures are under evaluated. Culture is absolutely not considered as an ally to women's

²¹⁹ Dairiam Shanti, 2004.

²²⁰ Engle Merry 2003, p. 961.

empowerment. Positive areas of culture and spaces that can be re-inhabited²²¹ are not taken into consideration as a resource for the women's rights empowerment.

And CEDAW?

In my opinion, also CEDAW in its text approaches culture as very distant realm from the women's rights international standards. Talking about a fight against harmful practices and asking the states to go against culture in case of contrast with the Universal HR standards. CEDAW sees culture as a problem: it sees it with the ancient meaning: an integrated block, consensual and sustained by habitual compliance from the members²²². CEDAW sees culture as harmful practices rooted in traditional culture. It makes a quick equation between custom and harmful practice said that the custom had to be changed²²³.

There is more. In its text, CEDAW utilizes the term culture in two meanings, firstly as an obstacle to its implementation and secondly as a resource, when referring to the process of cultural reformulation as the goal of CEDAW process²²⁴. In this way creates confusion, even because bigger emphasis is normally given to the negative meaning.

I would like to focus on the processes that can bring in general to these distortions of the meaning of these practices. Several times, harmful practices practiced by a small community become (in the consideration of the experts) the praxis of a country if not of a whole region. This phenomenon of dilatation of the practice has a very detrimental effect on the concept of culture²²⁵. It can also happen that the Committee experts, being so used to many violations, are tempted to judge a practice as harmful and automatically condemn the whole culture, instead of isolating the one practice²²⁶.

²²¹ Njogu, Orchardson-Margui, 2012, p.18.

²²² Engle Merry, 2003, p. 946.

²²³ Engle Merry, 2006 (b), p 59.

²²⁴ Engle Merry, 2003, p. 947.

²²⁵ Engle Merry, 2006 (b), p.62.

²²⁶ Id. p. 73.

Myths concerning culture

There are some mistakes to be avoided and some myths to be destroyed. First of all a better utilization also for women's rights of the human rights universal appeal is desirable. Secondly, we could not separate the women's conditions from the condition of the whole society and from the historical and contingent factors. Where societies create a positive cultural environment for women and their access to resources is increased the society as a whole experiences a higher level of development.

I think that the three myths identified by the SR²²⁷ can be all jointly considered as contributing factors that brought culture to be seen as also per se, and not able to be influenced by several external factors. The first myth is the fact that the customary laws are expressions of true indigenous value. In that meaning they are used as a tool against the neo-colonialism and the imperialism from the western Countries. Several harmful situations that now are oppressing women in developing ex colonized countries are the result of the legislation of colonizing countries who, to achieve their aims easily, started to give power to traditional chief, legitimizing that power with an external giving, and not anymore linking their power with the consensus and control from the communities they were governing. In that way the freedom of action of certain leaders increased and the women's needs and voices (among the others) have been not anymore considered²²⁸.

Furthermore, some consequences are also due to the patriarchal role taken by the colonizers: the colonialists had often the typical attitude as missionaries and they presented themselves as the patriarchal protectors of women against the bad wild men of their countries²²⁹.

Several colonial laws provided that the "long arm of rights could not arrive to be extended to the private and domestic sphere". The realm was so governed by indigenous customs and culture²³⁰.

The second myth to be demolished is about the culture as a monolithic and homogeneous block. Doing so, all the positive aspects of culture cannot be considered

²²⁷ Ertrük Yakin, 2007, Report of the SRVAW of 2007 Intersections between women's rights and culture.

²²⁸ Ertrük Yakin, 2007, n.59.

²²⁹ Rosenblum, 2011, p.22.

²³⁰ Tamale, 2007, p. 155.

as allied for the dialogue and for the construction of not-harmful practices. There is the thought that all the components of a tribe or the belonging to a community (victims included) agree and choose for a determined culture and for some consequent harmful practices. The lack of consideration of all the existing dissidents and groups who are already since ages fighting for women's rights against these practices undermines a lot this movements and renders the new human rights movement totally external and not felt as belonging to the interested populations. In this way, they are not also considered in the fight against HR violations, and all the intervention is planned with a top up approach.

The third myth concerns the fact that the extreme situation of war and revolutions, natural disasters and poverty or political aims influence and exacerbate the harmful practices, and I think that always more they go far away from the initial meaning of the practice. Also here the attention is not focused only on the practice (exacerbated by the situation) but we are tempted to consider that this is the culture (since ever and shared by all the members) and we judged the whole culture as wild and not civilized.

The suggestion given by the SR aims at increasing the negotiation with the cultures and the deeper study on them, in order to identify in their internal the HR culture already present and amplify that. On the same directions are some scholars²³¹.

The second indication concerns the political and social factors which strengthen the discriminations and nurture the harmful practices, which have to be considered and targeted as assumption to fight discrimination²³².

²³¹ In the same direction An- Na'im 1990, p. 332, when he talks about "internal cultural legitimacy".

²³² Ertrürk Yakin, 2007: For example, better attention should be given to the contradiction between the universality of human rights that does not consider the big economic differences existing in the planet. The big economic and social differences between nations, between men and women's groups, the polarization of the power north south have belittled the practical universality of human rights.

Culture as a rock or as a river?

After all these considerations, I would like to describe the wished way of considering culture and the possibility to have it as ally and the modalities to collaborate with it. To do it we have to consider the culture in its new conception. It is very important because from the consideration we have of the culture (movable or not) depends how social changes can be imagined²³³.

As seen, the old consideration of culture (before the last two decades) sees it as a “*static and homogeneous system, bounded, isolated and stubbornly resistant*“. According to the new concept, “*a cultural system is in constant and creative interaction with other societies and with international forces*²³⁴“. “*The matter is to identify if we consider the culture as a rock, or as the river always in movement*²³⁵”. The culture is something dynamic, in change²³⁶. The changes are produced by internal factors and by external ones. The culture can be multifaceted, there is always a cultural alternative that comes across the HR standards more than the one that is problematic for the international ones²³⁷. If we consider culture as something open to change and we must target the local cultural practices as resources for changes²³⁸.

Upon this perspective, even the lack of teeth from CEDAW, its lack of sanctions is not anymore so important. CEDAW is able to make the difference not through coactions or force but through production of cultural meanings. To do that, CEDAW shall not marginalize the culture, but shall put it at the centre of its attention, without condemning it and considering all the factors which brought to a particular harmful practice, without confusing it with the whole culture. From the internal of the culture CEDAW should look for the modification of the norm, utilizing forces which are part of the same culture (local women’s groups, CSOs, Institutions).

In that way CEDAW is a powerful place of culture creation. International Hr Laws and CEDAW are also cultural systems, they are the results of religious, national and cultural considerations. Being a cultural system, its strength is the persuasion and not the

²³³ Engle Merry 2006 (a) p. 64.

²³⁴ Engle Merry, 2003, p. 946.

²³⁵ Engle Merry, 2003, p. 966.

²³⁶ An-Naim, 1992, p. 432.

²³⁷ Id, p. 432.

²³⁸ Engle Merry 2006 (a) p. 63.

coercion²³⁹. The two systems are both result of cultural processes. The International human rights system is cultural²⁴⁰, the practices and the customs that sometimes are identified only as harmful and present in local communities are cultural. It must be clear that the scope is an integration of the two cultural movements. One must enrich the other and no one is going to disappear. A balance must be found (coherently with what we are saying it can exist a different balance in different locations and situations) in order to allow minimum standards to be applied and culture not to disappear. I would like to highlight again the distinction: culture and not harmful practices.

If both can condition themselves reciprocally, this persuasive exchange can be also a good tool to constantly verify the real universality of human rights, as more they are accepted and integrated inside the local customs and traditions, inside the culture. In this way, from the bottom to the top it can be appraised the adequacy of the standards to countries, bringing out also the need of eventually rethinking of some modalities or rules²⁴¹.

²³⁹ Engle Merry, 2006 (a) p. 65.

²⁴⁰ Andrews, 2003, p. 613: "Religious, national or cultural considerations have always influenced the substance of human rights. They have generated the debate about universality of human rights...".

²⁴¹ An Naim, 1992, p. 3

CHAPTER 4. Localizing Women's Rights

To start this persuasion process, the universal human rights, to be respected and effective (to be universal) must be felt as not imposed from the top. More specifically, this entails that the sense of belonging must be experienced at two levels: at national and at local level. At national level compliance with international standards must be felt as exercise of national sovereignty and not as external limitation²⁴². At more local level, human rights must be felt as something that belongs to the people and their formal and informal institutions. To achieve this goal, the women's rights must be legitimate with the culture of a particular community²⁴³. To make the difference at local level is more the sense of belonging of one norm rather than the punishment in cases of not respect. Human rights ideas are respected when they become part of the daily life of ordinary people and through the awareness of being bearers of these rights²⁴⁴.

To obtain these results women's rights need to be situated into local contexts of power. The concrete situations of one location must be taken in consideration.

Localization and vernacularization

The effective implementation of CEDAW and of women's rights standards depends on the relationships and the constructive dialogue between the governments and national and international NGOs²⁴⁵. To achieve this dialogue a constant work of negotiation is requested to the institutional actors (at national and local level) and to the various representatives of the civil society (at local, national and international level).

This process of negotiation presupposes a translation of the principles of CEDAW into a language that is understandable from the beneficiaries and a tailoring of the norms, considering the needs of the beneficiaries in order to localize them. On the other side, the needs at grass root levels must be raised up and brought to higher level of attention. This operation is not only a linguistic/semiotic exercise; it can sometimes concern also modalities of application and contents.

²⁴² An-Naim, 1991, p. 332.

²⁴³ Id, p. 332.

²⁴⁴ Engle Merry, 2006 (a), p. 57.

²⁴⁵ Engle Merry, 2003, p. 941.

Bridging communication gaps

Sometimes the norms of CEDAW dictate rules, assuming wealthy and equalitarian situations. This discrepancy with the reality can be explained by the typical Convention creation process. Considering the process of creation of norms on women's rights and the big diplomatic job that is at the base of the negotiations, we must make two considerations. Firstly, the representatives of the states, even if from developing countries, cannot be always able to transmit the needs of their populations at decision level. In this way the wealth differences in the Country can be forgotten. Secondly, we must consider that the norms of CEDAW are the result of long negotiations, sometimes on single words. The need to make them universally accepted can go to detriment of the appropriateness to the local case. This is sometimes also due to the need to keep still into the "game" countries who seem to be reluctant.

The consequences of these prolonged negotiations and of the consequent compromises can make the norm so articulated and vague at the same time, that can be very difficult to be interpreted. The vagueness of the norm raises the need of a localizer.

The process of localization and bridging the gap between norms which have international values and local realities takes the name of vernacularization²⁴⁶. In our context, vernacularization is the translation of global women's rights discourses and practices by grafting them into culture, tradition, belief and teaching of their own societies²⁴⁷. Through this localization, we could obtain an appropriation of the norms, with consequent bigger legitimacy of women's rights and bigger respect of them. This local adoption can bring also into a mutual exchange between the two realities. The women's rights will take some of the ideological and social attributes of the places and retain some of their original formulation²⁴⁸.

Who are the vernacularizers?

The process of localization is a gradual one. As said it has two directions, one from the top to the field, the other from the bottom to the top. National legislators are the first in charge of localizing the CEDAW. Laws must appear not only as a generic repetition of

²⁴⁶ The reference is at the "vernaculus" the Latin name to indicate something domestic, indigenous.

²⁴⁷ Sezgin, 2011, p. 1019.

²⁴⁸ Levitt, Merry, 2009, p. 446.

the dictate of the Convention, but must reflect the problems and the peculiarity of the single country, with the commitment to make the law operative into the concrete situations.

But the vernacularizers (after the promulgation of the Constitutions and laws) are to be identified in several other actors. At their respective level the local governors and administrators and the officials of the formal institutions. At informal level, a very big role is played by community leaders, non-governmental organizations, participants and social movements.

This process of vernacularization needs the work of people which are very capable. They work as knowledge brokers between culturally distinct social worlds²⁴⁹. They must be able to efficiently report/communicate and demand in both the realms they are involved in. They are in charge of bringing the needs from one direction to the other, and vice versa²⁵⁰.

Their role is not a mere translation one; they need to exercise a creative/hermeneutic activity not void of risks.

The risks/limit of the hermeneutic activities

In their hermeneutic activity, the vernacularizers are often in the position of modifying the norms. They cannot overcome determined limits. The HR standards cannot be neglected; they must be the base of the discourse because they are the ones who produce changes²⁵¹. The work of the translators should be always imprinted on the conviction that the culture must have space but this space is limited. This space is limited until the cultural norm does not touch basic and fundamental human rights²⁵². An excessive manipulation of the norms, which cedes too much in favor of the tradition, for example allowing harmful practices, will bring to the risk of voiding the norm of the capacity to bring a change. The strength of women's rights resides in the fact that they have gone against ideas that were considered untouchable. Women's rights must challenge existing

²⁴⁹ Engle Merry, 2006 (b), p. 38.

²⁵⁰ Concerning the risks and the ability needed by a vernacularizer, see also Rottenburg, Richard, (Far-fetched Fact: a parable of development) 2002, p. 228 – 229.

²⁵¹ Levitt, Merry, 2009, p. 442.

²⁵² An Naim, 1991, p. 343.

ways of thinking; otherwise they will not produce change²⁵³. This incidence and pervasiveness must never be lost, even at risk of continuing the contrast between norm and receivers. The contrast should not be seen as a negative aspect, it is pretty expectable, mostly because the components of some customs they challenge are deeply rooted in the daily lives and in general convictions²⁵⁴. The constructive dialogue will work on this contrast in order to produce a behavior change.

To maintain this balance is not always easy. What can be adapted are the level and modalities of application of the standards to the local situation, without transforming the root ideas, the ratio of the international norm. Without the magic inspirational ideas of human rights standards²⁵⁵, the way done could be not repeated²⁵⁶: the human (and particularly the women's) rights are so universally known, because they maintained their essence, their magic charisma, because they did not change their basic contents.

One other risk is linked with the position of the localizer. In this process of translation, the localizers bring with them needs and expectations of both groups (the international and the national, the formal and traditional authorities). They are not trusted neither by of the two beneficiaries of the translation²⁵⁷. Both will be diffident of the interest that the translator is bringing from the other side.

Some other times they can be partial, because of their incapability of being exactly in the middle of the two poles. Their origin can condition their intervention in favor of one side rather than of the other. In this way, immediately they will lose the trust of the neglected one.

Anyway, knowing the social position of the localizer/s, we could forecast in which way they will translate the norms and to whom they can be considered closer²⁵⁸, and we can explain the modality of the translation. It is intuitive that the strength of local vernacularizers resides in the very deep comprehension of the local reality: from there they will choose the best ways to insert international principles. A position closer to the

²⁵³ Engle Merry, 2006 (a), pp. 57, 58.

²⁵⁴ An Naim, 1992, p. 5.

²⁵⁵ An Naim, 1992, p. 431.

²⁵⁶ In this direction also Engle Merry, 2006 (a), p. 55: "*The global human rights law is an important source for local social movements*".

²⁵⁷ Engle Merry, 2006 (b), pp. 42, 43.

²⁵⁸ Engle Merry, 2006 (b), p. 46.

international standards can be found in a vernacularizer with a broader international background, who for a longer time has been nurtured with international human and women's rights principles²⁵⁹. Both the typologies of translators are able to manage with these operations; sometimes the collaboration between different layers of intermediaries can be very productive²⁶⁰.

Both the parties expect results. On the one hand, the beneficiaries expect that their needs are raised up and taken in consideration at higher level. On the other one, the international movements (and the donors in particular) expect that very specific outcomes are achieved, that tangible results are produced.

To satisfy the needs of both, problematic is the utilization of the language needed with the localization²⁶¹. With local people, the language to be utilized should abandon the human rights discourse, to take more comprehensible and more common language. The problems, solutions and needs must be felt all as close to the daily life (in this way we feel they belong to us).

The kind of discourse and language with the donors cannot be the same. Because we are talking about influencing the behavior process, which needs long time to obtain achievements, sometimes the perception at higher level can be that nothing is changing. To avoid this risk, (and in particular to mobilize funds and to sensitize big investments) the objectives and the outcomes presented to donors must be resonant and revolutionary. In my opinion, is in this moment that the risk of making an equation between culture and harmful practice becomes very real. In order to present the action as very effective, the slow modification of the culture can be considered not enough to raise attention and to mobilize funds and can be accompanied with big emphasis on "elimination of harmful practices". The consequent interventions focus on the practices to be erased. In this way correspondence between practice and culture, and negativity of the culture are highlighted.

²⁵⁹ Id, 46

²⁶⁰ De Feyter, 2006, p. 10 -14. The chain of intermediaries from the bottom to the top and vice versa is described: he identifies local CBOs, national NGOs, states and international NGOs. He also explains how the language changes during this way and how effects produced can be relevant for the original community or sometimes could not produce the local wished consequences, but more broadly extended results.

²⁶¹ Levitt, Merry, 2009, p. 446, 447.

Forms of vernacularization

As said, the intensity of the localization and the modalities are the variables who are allowed to change. Two kinds of localization have been identified. Their form depends on the nature of localizer and on how deep the cultural practice is rooted in the daily activities and in the awareness of the people. The women's package can be utilized in different levels, with more or less reference, according to the attractiveness that it is able to exercise in various settings²⁶². The more superficial way is known as replication: the transnational idea remains the same and the local cultural norms determine the way of application²⁶³. The content of the rights stays the same and is the name and the framework which is going to be changed in order to be more familiar with the beneficiary population (i.e. human rights can become welfare rights).

A typical way of replication is the utilization of symbols and signs that are considered owned by the society, dressing the rights with folkloristic or symbolic signs.

A deeper intervention is constituted by the hybridity, in which also the contents are more conditioned by the local ways of solving issues. For example members of institutions and their competences are changed²⁶⁴. (I.e. the Courts are not institutionalized as jury and upon the motto of sanction, but they are perceived more as able to facilitate friendly resolution of disputes).

Advantages/ challenges

With the localization process, some gaps of CEDAW can be bridged. One of the accusations that have been made on CEDAW approach is that it does not consider the concrete situations and settings where it should be applied. That can spoil its universality: natural or human catastrophes (war, dislocation), economic discrepancies can constitute a big obstacle to an effective implementation of CEDAW's principles and cannot be neglected. The limited resources of developing countries or the breakdown of structures in post-war or post disasters situations cannot be underestimated²⁶⁵. In such situations, the influence of traditional culture is more predominant and the absence of

²⁶² Levitt Merry, 2009, p. 450.

²⁶³ Engle Merry, 2006 (b), p. 44.

²⁶⁴ Id, p. 48.

²⁶⁵ Andrews, 2003, p. 610.

the rule of law and of the structures in charge of the respect of law (police, judges) makes the situation very uncertain.

The risk is that several times, also in more peaceful situations, the harmful practices are considered as *per se* and not within their context²⁶⁶. Vernacularization can highlight the concrete situations which brought to the establishment and conservation of a specific harmful practice. This knowledge of the situations can allow the localizer to install a dialogue and try to remove the practice presenting the best possible alternative, in order to make the women-protecting norm accepted by the community. Starting from the point that communities follow a norm as far as it is convenient²⁶⁷, the localizers must find the way to put women's rights principles in a "cool" and convenient way, convincing the men (in this case the one who can see negative consequences) that the well-being of the community depends also from the well-being of the female population. Adopting a more holistic approach, and describing, for example, how better a women's rights respectful society reaches its well-being and wealth targets can be more persuasive than a redundant international norm.

Localizers can intervene also to moderate the secular and individualistic approaches²⁶⁸, typical of North American and European philosophies, which have been translated in CEDAW and in women's rights Conventions. For these kinds of obstacles, localization can constitute a good tool to improve the efficacy of CEDAW mostly in developing countries²⁶⁹. The way in which women's problems are understood is very important. If a problem is understood in one path (for example religious), it will stay in that path, and the women's conventions must treat it according to the discourse of that setting. Remaining within the religious sphere and respecting its discourse, modifications can be proposed more easily²⁷⁰. The CEDAW spreads values which are founded on a secular vision of life.

The localizer should be also able to fill the gaps constituted by an egalitarian and individualist approach, typical of western values, but sometimes not corresponding with

²⁶⁶ Merry, 2006 (a), pp. 59, 60.

²⁶⁷ An-Naim, 1991, p. 336.

²⁶⁸ Andrews, 2003, p. 610.

²⁶⁹ Andrews, 2003, pp. 609, 610.

²⁷⁰ Levitt, Merry, 2009, p. 452.

African or Asian values. Also in this case, adaptations should be needed, in order to introduce women's rights within a communitarian framework.

Always through a deep consideration of the context, the localizers are able to focus not only on the harmful practices, but to take into considering their rooting causes. In this way, when some practices have big importance and meanings for the passage and entering in the adult society, they can work on the alleviation of the risks connected with the practice, maintaining at the same time the initiation or communities' meanings of the ceremonies²⁷¹. Similarly, the mere suppression of a harmful practice, without an analysis of its meaning, can represent the wrong solution, if the immediate reaction of the community is to find another practice to reach the same objective²⁷². Without targeting the rooting causes, that practice could not be simply removed. The vernacularizers should work on the modification of the root causes and consequently on the harmful practice.

An alternative should be proposed by the localizers also for the people (several times women) who, with the removal of some practices can lose their role and profession. The deep knowledge of the communities can allow them to propose economical alternatives, without rejection of the cultural reasons (I.e. the former priestesses or mama queens in secret societies can risk to lose their roles and income when such practices are not any more used²⁷³).

Last, but not least, I would like to highlight that localization can provide a help on the big problem of the lack of awareness of rights from right bearers. Sometimes some practices are not considered human rights violations and are embedded in the daily life and routinely committed. These cases are particularly difficult to be eradicated: they are not considered human rights violations. The role of the vernacularizer is to provide a translation of the violation in terms of human rights violations, to highlight the

²⁷¹ Examples in this way have been tried in the FGM practices. It is clear the FGM has a role if initiation which is essential for the girls, in order to become women and be able to start an adult life. Some tentative have been made, in order to maintain the initiation meaning, without mutilation.

²⁷² Ertrürk Yakin, 2007, n. 34: In this direction, the example of Cameroon demonstrated that the elimination of FGM, without addressing the root causes, has brought the nurturing of other practices with the same aim of FGM: breast ironing, a practice of trying to retard the growing of breasts to girls, in order to retard the moment in which they will start being attractive form men and starting sexual activity.

²⁷³ Several time FGM is practiced by women and a big obstacle to start a dialogue on removal of the practice is the objection that in that way several women will lose their professions, and correlate prestige and roles in societies.

existence of a violation. They can start in this way a circle of awareness, which should be supported also by institutional and traditional leaders. Always more women will start claiming respect for their rights as soon as judges, police or traditional leaders start applying the translated principles of protection of women's rights. To produce awareness and respect of rights, the complete ownership of the principles is an essential assumption²⁷⁴ and should be supported by the local institutions.

Examples from the field

Some good examples of re-reading of the traditional practices and roles of women have been produced in different regions all over the world. I think that it can be considered encouraging the fact that also a very big obstacle represented by discrimination imposed by the Shari 'a law can be faced and challenged through specific measures tailored for specific situations. The conflict should not be considered inevitable and irreconcilable²⁷⁵. At the same time the target should not be to change the Quran, but the cultural dispositions and the stereotypes concerning women and not directly depending from the holy law.

In India and Egypt, women's groups managed to offer women friendly interpretation of personal status law, questioning on the authoritative interpretation of some rules. They demonstrated how actual norms are the result of a male dominated interpretation. Recalling the ancient improvements of women's situation produced by Islam when first revealed, and making them free from patriarchal interpretations, colonial influences or from pre-Islamic tribal customs, they manage a more women friendly interpretation²⁷⁶. In Egypt, utilizing Islamic framework facilitated the reading of women's rights under the principles of Sharia. The recalling of Prophet Mohamed allowing a woman to divorce from her husband has been utilized to give the bases for an authentic interpretation. In such a setting, a mere secular approach could have produced a backlash and very minor results that the one obtained. Also the compulsory jurisdiction of Sharia Courts, when present, should not be bypassed (their bypassing could marginalize people, considered sinners, from the community and produce very

²⁷⁴ Ray and Purkayastha, 2011, p.42.

²⁷⁵ Sezgin, 2011, p. 1012.

²⁷⁶ Id, p. 1013.

deleterious consequences). The solution founded by Indian Muslim women was to apply Sharia law in courts composed by both men and women. These courts apply the same law, but with an eye to universal standards of human and women's society²⁷⁷.

Within some tribes of Maasai in Tanzania, some positive elements of a culture have been seconded while some harmful have been modified. Circumcision rituals have been put in place, in which girls are "circumcised" (with all the symbolic valued connected), without a cut in their genitals and with providing of education and counseling concerning their sexuality. In this way, the same targets of the ritual are reached, without inflicting harmful practices²⁷⁸. In Mali the role of men in helping wives during pregnancy has been emphasized: in Senegal and in the Great Lakes Region considering the masculinity a modifiable concept, they worked on the meaning of being a "real man", rejecting dominant components and actively involving men in the fight against HIV²⁷⁹. Also practices and re-evaluation of oracy and storytelling can constitute a tool of empowering women. Their role of educators of the children is a traditional one; it should be emphasized and maintained²⁸⁰.

In the Fiji, a very big importance has been given to the context and the possible consequences of removal of a practice without considering the possible consequences. The problem concerning Bulubulu (a practice of reconciliation/restoration deeply embedded in the Fiji culture) has been contextualized. In the rural areas it has been considered by localizers as bringers of more advantages rather than disadvantages. The removal of the practice could bring to marginalization of the victim of a rape without giving her a real alternative source. The ceremony of a women accepting restoration and forgiving the perpetrator will allow her to marry and to continue being part of the community. Insisting more on the application of the practice to rape and not on the practice *per se*, good compromising results have been produced. The practice has been maintained for the social consequences for the women, but in case of rape it has been considered as complementary and not as an alternative to national courts²⁸¹.

²⁷⁷ Id, p. 1025.

²⁷⁸ Njogu, Mazrui, 2012, p. 10.

²⁷⁹ Id, p. 11.

²⁸⁰ Id p. 14.

²⁸¹ Engle Merry 2006 (a) p. 72.

In North Uganda I can recall from my personal experience the successful tentative of the local social workers to talk about the familiar roles and the lifestyle existing before the civil war and the displacement. Particular emphasis has been put on the exacerbations due to the external conditions. A strategy of reducing VAW and empowering girls was founded on returning to the better life present in the ancient peaceful villages before war.

CHAPTER 5. Back to Sierra Leone and Uganda

I would like now to explore the consequences that this theoretical views have in Uganda and in Sierra Leone, and the possibilities that vernacularization can offer to the actual situation of these countries. From the latest country reports, some considerations must be done. Looking at the relationship between the Committee and the two states in occasion of the country reports, it seems that an effective communication is not yet in place between the Countries and the Committee of CEDAW. It seems that we are far from the “constructive dialogue” which is into the intention of CEDAW. The respect of CEDAW from the States during the years, according to my opinion, is only formal and as far as it is enough to show that they are taking all the necessary measures to comply. The measures are mostly visible in interventions that address civil and political rights. Institutions are not funded or severely under budgeted. In this way economic, social and cultural rights are neglected. The rural populations and the rural women in particular are governed by traditional authorities, who have the real power in these areas.

“Othering” in Uganda and Sierra Leone

We could see, paraphrasing the Special Representative on Violence Against Women, that the phenomenon of othering is present also in the two countries I have examined, but with different modalities. The governments of the 2 countries (as we have seen in the analysis of their Country reports) treat the cultures and traditions as an insurmountable obstacle. It is apparent that they refuse to face the big wall constituted by cultural practices and stereotypes and to start a confrontation with them.

In Uganda the othering is mostly linked with the war/post war situation, the “others” are the Acholi the Luo tribes and more in general the populations living in the Northern Provinces still devastated by the civil war.

Culture is in this case connected with being rebels, and with a lifestyle regarded as wild and brutal. The newly constructed villages and the left behind IDP Camps constitute a “far away location dominated by patriarchal traditions. The intervention in these assets specifically concerning women has been left to the international Community, also in terms of funding of the local institutions. Also from the country reports they are treated

as a separate issue, and the importance given is very low, even if they constitute a big part of the population.

In Sierra Leone the othering is more geographically determined and has more impressive numbers. The big distinction is between the people living in the Peninsula (the area of the Capital Freetown, geographically small and inhabited only by the 30% of population) and the people living in the rural areas. Two thirds of the population is living in rural areas. Two thirds of the Sierra Leonean women live of agriculture. Their problems are not seriously addressed by the governments, if not in a superficial and urban/western way.

This is demonstrated by the diffusion of services provided to rural populations and to rural women. The measures undertaken taken in creating Courts, health services and education (mostly secondary and vocational ones) are much differentiated in the two identified areas in each country. The intention and capability to enter in the private sphere is also very limited in the rural areas, and the feeling of the state and rule of law is correspondently very lower in the rural and post war areas.

Looking at the Country reports of the two countries, it looks like that the culture is “more” immobile there, while is more able to change in the more developed and calmer areas of the country.

Role of the Customary Courts

I think that after a good observation of the concrete situation on the ground, a big role to protect women’s rights can be played in the future by the customary courts in both Uganda and Sierra Leone. As said, the vernacularizers are not only to be identified in the official government institutions and personnel, but also in the people and officials who manage to administer the justice. Justice can be administered in National Courts, but the observation of the reality suggests that more attention must be given to the customary Courts. These Courts are several times in charge of issues that mostly attain to families, women/men relations and the situation of women in general.

I consider that the conception of culture as a resource should start from such grass-roots institutions, the ones able to create the change in the mentality also of the right bearers, women and girls, concerning the existence and the justiciability of their rights. These

courts are the ones that work mostly within areas that normally are forbidden to formal laws and courts: they are perceived as legitimated to regulate these sensitive issues, and therefore they have the possibility to produce changes. I definitively think that they represent a possibility of good use of customary system (who normally administers laws which are embedded in traditions) as ally in the spreading and supporting of women's rights, deep in the villages and in accordance with the authority of the local leaders.

The concrete absence and lack of accessibility of national formal Courts in rural areas makes the customary ones a very important reality in both the countries.

Instituted during the colonial era by the British, they were in charge of administering the local rule (counterpoised to the official English rule), they have been maintained by the national governments²⁸² after the independence, because of their being spread and known from the population.

In Uganda Local Council Courts are in charge of grass root justice, in oppositions of the justice provided by the government. People have today the choice to choose one or the other. The Local Customary Courts have jurisdiction on land, children and other family matters²⁸³. At their village level (LCC I) a minimum quota for women shall be guaranteed. 30% of members of the courts should be women. The courts are physically pretty accessible, and they speak the indigenous language of the people.

In Sierra Leone, the Courts have jurisdiction over cases of customary matters. If we think about the bigger complain of CEDAW Committee concerning the SL Constitution, which does not allow the international standards to directly enter in the sphere of the private, familiar and customary issues, we could understand how big the relevance of these courts can be in this country. Also the quantities of people theoretically served by these courts are impressive: 70% of the population (the one living in the Provinces, out of Freetown) have almost only access to Customary Courts²⁸⁴.

The favorable aspects of customary laws I would like to highlight are their flexibility and the sense of ownership felt by the populations. They are felt as something familiar

²⁸² Maneh, Oloka Onyango, Cole, 2005, p. 5.

²⁸³ Id, p. 7.

²⁸⁴ Id, p. 9.

and owned by the populations. Furthermore they are continuing evolving by nature, and so are able to be receptive of external inputs.

In their judgments they use equity and common sense, and they are mostly restorative: the money of fines goes to people and not to the state. The lack of lawyers (lawyers are not allowed) makes them cheap and the lack of formal background allows them to be fast.

For the same kind of reasons, also after the natural disasters which characterized Sierra Leone and Uganda they have been able to function also despite and immediately after the war²⁸⁵. They have been in this case, for long time the only resource, considering the decimation of official structures produced by the civil war and still lasting in both countries.

For our interest as women's rights activists, the lack of written law, allows these courts to be more modern and to be open to innovations.

On the other side, some concerns must be raised. The restorative nature can produce distortions due to poor situation of families. Rape cases could be treated without big consideration of the pain and psychological sufferance of the survivor, favoring a restoration to the family (and "friendly" resolution of the case).

The Courts can be used by certain elites to persist in traditional habits and perpetuate them also with the "justice consensus". The officials in charge are not trained (mostly for lacking of funds) and very few lawyers have been appointed to facilitate them. Discrimination is obviously the point that more concern the women's advocates. Also at that level, the quotes did not produce (in Uganda) the expected results concerning bias against women. The one third quotas has not been filled and even when filled, women are mostly at lower representation level²⁸⁶.

The decisions taken by these courts are in both countries reflecting the patriarchal system and because of their closeness with local situations it is not allowed to the women to have much power. It does not correspond with how daily life is or should be. Several stereotypes are still present. The husbands cannot "lose the face" in these disputes, even if openly wrong. The women are the ones supposed to lose the face.

²⁸⁵ Id, p. 11.

²⁸⁶ Id, p. 13.

Expectation of women submission and admission of possibility for the husbands to beat their wives reduce a lot the impartiality and the level of hearing of the women's voices²⁸⁷.

Despite the lastly analyzed constrains and concerns, these Courts can represent the field in which localizers should face the norms, stereotypes and cultural practices against women. I think that all the discourse of localizing and vernacularizing the women's rights principles and standards should at first be texted at local Courts level. They are the first places where the populations seek to achieve their rights. Considering the big social legitimacy that customs and customary laws and courts have²⁸⁸, they should be the target of the Constructive dialogue of CEDAW and women's activists. With the power they have, their decisions will be accepted also in innovating women's conditions. The small innovations on women's rights and conditions can create that circle of awareness which will empower women. Women's advocates, supported by local courts will ask for more acknowledgements of rights and they will feel safer to claim for them.

They are the place where internal debates to reform culture from the internal must take place, without trying to impose something from the top (in this case represented by the State at central level). NGOs and CBOs should exercise pressure at customary law level, lobbying the customary courts and trying to have their voice heard.

I think that also here the kind of discourse that should be done is not if applying customary norms or not. There is not a real alternative to customary. The state is not able to serve the people, as the customary courts do. The matter should be to lobby them and to conform them to the standards and innovation of the human rights system. They cannot be considered "others" and be left away from CEDAW implementation.

Despite their limits and defects, we cannot consider them as negative and try to modify them from the external. An internal dialogue is necessary.

And also in considering them, we must avoid to make the same mistakes done with the culture in general. We must distinguish between cultural norms and dysfunction caused by social upheaval. (attention to the exacerbation due to IDP situation should bring to

²⁸⁷ Id p. 15.

²⁸⁸ Id p. 22.

remove or alleviate the causes of exacerbation, instead of a removal and condemnation of a cultural praxis per se).

Feelings from the field and scholars

As already said, my interest for the implementation of the women's conventions in the field resides in practical constraints and failures of the tentative of pure top up approaches and implementations. As far as I experienced from the field, as vernacularizers, I also would like to highlight the fact that also these processes of localization are not void of failures and difficulties. I have experienced firsthand the complexity in implementing on the field women's rights projects which were written (in some cases almost with the sole intention) to please donors, within a human rights discourse which needed absolutely to be translated and modified in the phase of implementation. I had the possibility to appreciate that also some donors (even if not openly) recognized the need of mid-term amendment and adaptation to the situation on the ground. But these were exceptions; to provide data and quantifiable results has always been mandatory. The major paradox I have found is that also in setting of very early post war, with very short time distance from the cease fire, fast results were expected, ignoring the long process of behavior change.

The amendments to projects were characterized by the incoming requests from women's groups in order to obtain better and more massive economic empowerment, considered as minimum assumption to reduce discrimination. Often we have been blamed as international community because our words/women's rights sensitizations and activities could have stayed and remained void of effective contents, if not accompanied by an analysis of the reality and a correspondent concrete/monetary empowerment.

Therefore I would like to confirm the theoretical observations that the analysis of the component of economic and social reality is very important, together with the advantage for the community as whole. I confirm that men have been the ones who can make the difference in women's empowerment, and for that reason the measures should appear convenient also for them and not only as a privation of a comfortable situation. Also

concerning the individualist-group aspect, “group component” in African villages have bigger importance than in European contexts. The women, following traditional grouping schemes already present in their villages, gained power as lobbying force and vehicle of external funding. They have been able to attract funds for their whole villages and not only for activities concerning their groups. The strategy of donors and on several NGOs has been to target the whole community, not only the women as a separate issue. In that way several have been the advantages. In fact, in this way, we guaranteed the respect of women’s rights and the role of women’s groups and at the same time we managed to appeal for the active involvement of men. We were in a better position to try to demonstrate that women’s rights, equality and women’s empowerment were not a women’s issue. They are not only activity for the women, but they were able to affect positively the entire community.

Another very clear perception from the field was the tendency not to entrust police forces, and official institutions in general, as they were perceived as external. On the other side a big preference was reserved to traditional entities that have been felt as closer, more reliable and able to speak the same languages and to have the same comprehension of problems of beneficiaries. No trust was reserved to courts or to the power of the national state, considered far, unreachable, and consequently unreliable. The total absence of national Courts (mostly in the post war in North Uganda) pushed me in this research to analyze more concrete involvement of traditional and customary courts, the only really existing in rural areas.

In three years of managing of counseling centers for victims of gender based violence in very rural areas of Sierra Leone and in internal displaced people’s camps in Northern Uganda, very few cases of rape were able to arrive to police and to be taken seriously, and no cases arrived to National Courts. Local measures and village procedures have been always been preferred to the formal procedures.

The tendency to start a dialogue instead of top down/ front-lessons facilitations brought us to understand that tailoring women’s rights to pre-war situation or to really indigenous traditions could have been more productive rather the anchoring it to European or Universal declarations. The tailoring of the outcomes has brought us to re-

write/assess and be less ambitious with our targets and to insist on durable and sustainable effects.

Conclusions

After analyzing the implementation of CEDAW in the two countries of Uganda and Sierra Leone, comparing the Official Reports and the Shadow Reports coming from groups of NGOs, the situation of discrimination of women and women's empowerment in these countries is very disappointing. And this happens despite the fact that formally the two states ratified the convention since the beginning and did not oppose resistance under form of reservations. Their compliance with CEDAW has always been formal and it is clear the lack of real willingness or of the effective possibility to intervene on the situation of women mostly in the rural areas, and facing harmful practices and traditional and cultural stereotypes.

Analyzing the progress made by the scholars in the last two decades, I examined how the (traditional) culture started being considered as the result of several inputs and as an entity liable of transformations. Also the international women's rights system must not be considered as an immutable bunch of everlasting principles, if not a cultural system also able to be conditioned and changed. Upon this view, the (traditional) culture must be seen as a possible ally to change the women's condition inside the societies. At the same time, the international women's rights, to maintain their universality, must be more receptive of the inputs coming from the field.

Further to this consideration of these two cultural systems, a process of localization to tailor the women's rights to local realities has been analyzed. Several are the tentative and the good results obtained in grafting the international women's rights in local traditions in order to face local powers and stereotypes and patriarchal systems.

The vernacularization can guarantee a better implementation and sustainability of women's rights principles than a mere international legislation. The vernacularization should not forget the importance of international standards, and the strength of them in producing changes in the challenged societies.

My conclusions are not for an elimination of formal procedures (through this dialogue, the Committee can pose questions, the recommendation from the Committee could be

taken in consideration and the commitment of the State could be not only formal), but I wish a better commitment at local level. If it is true that the reporting system of CEDAW is very useful to start with awareness and movements concerning women's rights, it is also true that to reach a real equality, a more holistic and bottom up approach is needed.

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Grivel, Daniele

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