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**Gender Justice in Post-Conflict Societies:  
An Assessment of Sierra Leone and Liberia**

Abiola Akiyode-Afolabi  
Faculty of Law and Social Sciences  
School of Oriental and African Studies  
University of London  
2013  
Word Count: 86,694

## **Declaration**

This dissertation is my own, original work undertaken in partial fulfilment of the degree of Doctor of Philosophy of the University of London. I undertake that all the material presented for examination is my own work and has not been written for me, in whole or in part, by any other person. I also undertake that any quotation or paraphrase from the published or unpublished work of another person has been duly acknowledged in the work which I present for examination.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

## **Abstract**

This thesis looks at post-conflict laws and institutions in Sierra Leone and Liberia, through an examination of International Human Rights norms and the UN Women, Peace and Security Resolutions 1325 and 1820. It investigates whether international norms supporting post-conflict reconstruction effectively support women's human rights and recovery from armed conflict in domestic jurisdictions. Contesting the efficacy of the UN Women, Peace and Security agenda in these two countries, the thesis argues that gender justice cannot be achieved unless post-conflict reconstruction mechanisms – particularly laws and institutions – address the specific needs of women that can support their material gains and substantive integration.

This thesis locates gender justice discourse within feminist postulations of international law's failure to adequately address women's human rights during conflict and afterwards. It further questions the adequacy of domestic laws and institutions and their sensitivity to the human rights needs of women in Sierra Leone and Liberia. The countries' national legal frameworks and institutions are analysed to determine if they reflect the reality of international standards and norms regulating women, peace and security. Field data drawn from both countries is used to assess the efficacy of women's protection, prevention of violence against women at post-conflict, and the extent of women's participation in decision-making.

The thesis found that in pursuing gender justice and responding substantively to women's needs, it is important that national frameworks and institutions take into consideration the peculiar context of women coming out of conflict. The thesis concludes that the present protection mechanisms in both countries are too weak to guarantee gender justice and prevent future violation of women in conflict. Existing frameworks and institutions must be strengthened to support gender justice systems in both peace and wartime, support accountability for human rights, and provide material gains for women.

## **Acknowledgments**

The pursuit of this PhD has been a long and narrow journey for me, having had to combine several tasks to make my way through the four years of study. I am therefore indebted to several individuals who have contributed to this ‘big book’. I am particularly grateful to my supervisor, Prof. Fareda Banda, for her support in the last four years; her guidance and encouragement contributed immensely to the completion of this work. My thanks also go to Prof. Mashood Baderin and Prof. Peter Muchlinski for their support. One of my friends once told me that my sojourn in London is full of stories, doubtless enough to complete another book; I have come to learn through these years that perseverance is a virtue.

My interest in women, peace and security issues started when my organisation won a UN Trust Fund grant titled ‘Women in Conflict Zones’ in 2002. The project I managed was to assess the situation of women in the Niger Delta in Nigeria and Ife/Modakeke communities in South West Nigeria. The project led me to speaking to several women who shared their unique experiences of living with conflict they never engineered. The women’s stories propelled me to begin a sojourn for further investigation of what happens to women after conflict.

In the course of writing this thesis I have also come across many women who suffered similar and more violations, the gravity of which has no bounds. In the aftermath they are poor, widowed, orphaned and helpless. I therefore dedicate this book to these African women searching for justice in a complex environment. I remain grateful to the women who broke the silence to share their experiences with me during the course of my field work, and I also acknowledge the good people who are committed to transformative justice in country who spoke with me; I salute your commitment and perseverance. I specially thank my friends in the Amnesty International Office, Freetown and the Campaign officer UK, Ameen Bashir for their assistance, Solomon Sogbadi, the AI Liberia office, WANEP Liberia, and all the good people of Medina Village that I met during my sojourn in Liberia.

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## **Dedication**

I dedicate this thesis to the thousands of women who are victims of conflicts in Sierra Leone and Liberia.

And

To my most beloved daughter, *Sinmilola Diana Afolabi (1999-2003)*, RIP, you remain my guardian angel, but have accepted that I will miss you for life!

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## **Abbreviations**

ACA - ABUJA CEASE FIRE AGREEMENT  
AFELL - ASSOCIATION OF WOMEN LAWYERS IN LIBERIA  
AFRC - ARMED FORCES RULING COUNCIL  
AU - AFRICAN UNION  
AUGP - AFRICAN UNION GENDER POLICY  
AUWC - AU WOMEN'S COMMITTEE  
AWCPD - AFRICAN WOMEN COMMITTEE FOR PEACE AND DEVELOPMENT  
BPFA - BEIJING PLATFORM FOR ACTION  
CDF - CIVIL DEFENCE FORCE  
CDHR - COMMITTEE OF DEFENCE OF HUMAN RIGHTS  
CEDAW - CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN  
CPA - COMPREHENSIVE PEACE AGREEMENT  
CPP - CONAKRY PEACE PLAN  
CSO - CIVIL SOCIETY ORGANISATION  
CVR - COMISIÓN DE LA VERDAD Y RECONCILIACIÓN  
DAW - DIVISION FOR THE ADVANCEMENT OF WOMEN  
DDR - DISARMAMENT DEMOBILIZATION REINTEGRATION  
DEVAW - DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN  
DRC - DEMOCRATIC REPUBLIC OF CONGO  
EAC - EAST AFRICAN COMMUNITY  
ECOMOG - ECONOMIC COMMUNITIES OF WEST AFRICA MONITORING GROUP  
ECOSOC - ECONOMIC AND SOCIAL COUNCILS  
ECOWAS - ECONOMIC COMMUNITIES FOR WEST AFRICA  
ECPF - ECOWAS CONFLICT PREVENTION FRAMEWORK  
FGC - FEMALE GENITAL CUTTING  
GBV - GENDER-BASED VIOLENCE  
GC - GENOCIDE CONVENTION  
GOL - GOVERNMENT OF LIBERIA

HDI - HUMAN DEVELOPMENT INDEX

HRW - HUMAN RIGHTS WATCH

IANWGE - INTER AGENCY NETWORK ON WOMEN AND GENDER EQUALITY

ICC - INTERNATIONAL CRIMINAL COURT

ICESCR - INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

ICG - INTERNATIONAL CRISIS GROUP

ICHRDD - INTERNATIONAL CENTER FOR HUMAN RIGHTS AND DEMOCRATIC DEVELOPMENT

ICRC - INTERNATIONAL COMMITTEE OF RED CROSS

ICTJ - INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE

ICTR - INTERNATIONAL CRIMINAL TRIBUNAL RWANDA

ICTY - INTERNATIONAL CRIMINAL TRIBUNAL OF YUGOSLAVIA

ICTY -INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

IDP - INTERNALLY DISPLACED PERSONS

IHL - INTERNATIONAL HUMANITARIAN LAW

LNP -LIBERIA NATIONAL POLICE

LPA - LOMÉ PEACE AGREEMENT

LTRC - LIBERIA TRUTH & RECONCILIATION COMMISSION

LURD -LIBERIANS UNITED FOR RECONCILIATION AND DEMOCRACY

LWI - LIBERIA WOMEN INITIATIVES

MDG - MILLENIUM DEVELOPMENT GOALS

MDRP - MULTI-COUNTRY DEMILITARIZATION AND REINTEGRATION PROGRAMME

MODEL -MOVEMENT FOR DEMOCRACY IN LIBERIA

MSWGCA - MINISTER OF SOCIAL WELFARE, GENDER AND CHILDREN AFFAIRS

NACSA - NATIONAL COMMISSION FOR SOCIAL ACTION

NAPS - NATIONAL ACTION PLANS

NCDDR - NATIONAL COMMITTEE FOR DISARMAMENT, DEMOBILIZATION AND REINTEGRATION

NGP - NATIONAL GENDER POLICY

NPFL - NATIONAL PATRIOTIC FRONT OF LIBERIA  
OAU - ORGANISATION OF AFRICAN UNITY  
PAP - PAN-AFRICAN PARLIAMENT  
PSC - PEACE AND SECURITY COUNCIL  
REC - REGIONAL ECONOMIC COMMUNITIES  
RUF - REVOLUTIONARY UNITED FRONT  
SADC - SOUTHERN AFRICAN DEVELOPMENT COMMUNITY  
SCSL - SPECIAL COURT OF SIERRA LEONE  
SDGEA - SOLEMN DECLARATION ON GENDER EQUALITY IN AFRICA  
SG - SECRETARY GENERAL  
SGBV - SEXUAL GENDER-BASED VIOLENCE  
SLTRC - SIERRA LEONE TRUTH & RECONCILIATION COMMISSION  
SSR - SECURITY SECTOR REFORM  
TRC - TRUTH & RECONCILIATION COMMISSION  
UN - UNITED NATIONS  
UNAMSIL - UNITED NATIONS MISSION IN SIERRA LEONE  
UNCHR - UNITED NATIONS  
UNDP - UNITED NATIONS DEVELOPMENT PROGRAMME  
UNECA - UN ECONOMIC COMMISSION FOR AFRICA  
UNIFEM - UNITED NATIONS DEVELOPMENT FUND FOR WOMEN  
UNJP - UNITED NATIONS JOINT PROGRAMME  
UNPOL - UNITED NATIONS POLICE  
UNSCR - UNITED NATIONS SECURITY COUNCIL RESOLUTION  
UNTSO - UNITED NATIONS TRUCE SUPERVISION ORGANISATION  
VAW - VIOLENCE AGAINST WOMEN  
WANEP - WEST AFRICA NETWORK FOR PEACE BUILDING  
WAPCS - WOMEN AND CHILDREN PROTECTION SECTION  
WIPNET - WOMEN IN PEACE NETWORK  
WONGOSOL - WOMEN NGO SECRETARIAT, LIBERIA  
WPS - WOMEN, PEACE & SECURITY

## **Table of Cases, Statutes and Other Legal Materials**

### **African Commission**

*Annette Pagnouille* (on behalf of Abdoulaye Mazou) *vs. Cameroon* (African Commission on Human and Peoples' Rights) Comm. No. 39/90 (1997).

*Center for Minority Rights Development Kenya and Minority Rights Groups International on behalf of Endorois Welfare Council V Kenya* (African Commission on Human and Peoples' Rights) Comm. 276/2003 (2010)

*Civil Liberties Organization v. Nigeria*, (African Commission on Human and Peoples' Rights), Comm. No. 129/94 (1995).

*Commission Nationale des Droits de l'Homme et des Libertes v Chad* (Judgment) (African Commission on Human and Peoples' Rights) Com No 74/92. (1995).

*Legal Resources Foundation v. Zambia*, African Commission on Human, No. 211/98 (2000)

*Pagnouille v. Cameroon* (African Commission on Human and Peoples' Rights) Communication No 39/90(1997).

*Purohit and Moore v Gambia* (African Commission on Human and Peoples' Rights, Communication) 241/2001, ( 2003).

*Socio Economic Rights Action and Center for Socio Economic Rights v Nigeria*,(African Commission on Human and Peoples' Rights) Com No 155/96.

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*Fornah V Secretary of State for the Home Department* [2006] UKHL

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*The Prosecutor v. Pauline Nyiramasuhuko et al.*, Case No. ICTR-98-42-AR73 P (Amended Indictment) (1 March 2001).

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*Prosecutor v Dragoljub Krunac et al* (Judgement) Case No IT-96-23-T,1 February 2001.

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*Prosecutor v Brima, Kamara and Kanu* (Judgment) Case No- SCSL-2004-16-T 20 June 2007

*Prosecutor v Charles Taylor* (Judgment) Case No: SCSL-03-1-T ( 26 April 2012)

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### **South Africa**

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*Minister S v. Baloyi (Minister of Justice and Another Intervening)*, (1) BCLR 86 (2000)

*Treatment Action Campaign and ors v. Minister of Health and ors* [2002] 5A 721 CC

### **India**

*Laxmi Mandal v. Deen Dayal Hari Nager Hospital & Ors* W.P. 8853/2008

*Jaitun v. Maternity Home, MCD, Jangpura and Ors* W.P. No. 10700/2009

### **Convention on the Elimination of All forms of Discrimination against Women Committee**

*Ms. A.T. V. Hungary* Communication No. 2/2003 (26 January 2005)

## **CONSTITUTIONS, STATUTES AND OTHER LEGAL MATERIALS**

### ***Constitutions***

#### ***Ethiopia***

The Constitution of Ethiopia (1995)



**Liberia**

The Constitution of the Federal Republic of Liberia (1986)

**Sierra Leone**

The Constitution of Sierra Leone 1991 (Act No 6 of 1991)

**South Africa**

The Constitution of the Republic of South Africa Second Amendment Act, 1995 (Act No 44 of 1995)

**Uganda**

The Constitution of the Federal Republic of Uganda 1995

**Zimbabwe**

The Constitution of Zimbabwe 1979 (as amended)

**Nigeria**

Constitution of the Federal Republic of Nigeria 1999 (as amended)

***Statutes and Laws*****England**

*Offences Against Persons Act 1861*

**Ghana**

*The Children's Act 1998 (Act 56 1998)*

**Liberia**

An act establishing Criminal Court "E" (2008).

Devolution of Estates Act (2003)

Gender Ministry of Liberia Act (2001)

Accra Peace Accord (2003)

Domestic Relations Law (1973)

Equal Rights of the Customary Marriage Law of 1998

Truth and Reconciliation Commission Act (2005)

Rape Law (2006)

Criminal Procedure law 1978

**Kenya**

Law of Kenya, The Sexual Offences Act No 3 of 2006

**Sierra Leone**

Administration of Estate Act, Cap 45

Child Rights Act, No 7 of 2007

Citizen's Act of 1973

Domestic Violence Act No 20 of 2007

Devolution of Estates Act No 21 of 2007

Local Courts Act 2004

Mohammedan Marriage Act, Cap 96 of the revised laws of Sierra Leone 1960

Matrimonial Act of 1960

Prevention and Control of HIV and AIDS Act No 8 of 2007

Prevention of cruelty to Children Act Cap 31 1960

Protection of Women and Young Girls Act Cap 30 Laws of Sierra Leone (1960)

Registration of Customary Marriage and Divorce Act No 24 of 2007

The Human Rights Commission Act No 9 of the Parliament (2004)

The Lome Peace Agreement (Ratification) Act 1999 [No. 3 of 1999]

The Truth and Reconciliation, Act 2000 [No 4, 2000]

**Zimbabwe**

Criminal Law (Codification and Reform) Act Zimbabwe

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**Liberia**

National Action Plan for the Prevention and Management of Gender Based Violence in Liberia  
(2nd phase, 2009)

National Gender Policy (2009)

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Government of Liberia; Declaration of the Rights and Protection of Liberian Internally Displaced Persons (2002)

**Sierra Leone**

Declaration of the Rights and Protection of Liberian Internally Displaced Persons (2002)

National Policy on the Advancement of Women (NPAW) 2006

National Policy on Gender Mainstreaming (2006)

Sierra Leone Resettlement Strategy (2001)

Sierra Leone National Action Plan (2010)

## Chapter One: Introduction and Literature Review

*'Conflict is a two-edged sword with razor sharp edges that cut both ways. Add gender to it and you have a veritable atom bomb ticking away, ready to explode'*<sup>1</sup>

### 1. Problem Statement

The concept of transitional justice has attracted considerable interest in the last decade and has directed interventions supporting post-conflict decisions and developments. Moreover, it has significantly impacted literature, addressing the effects of post-conflict mechanisms on women. As McEnvoy observes, transitional justice has become, 'institutionalized and mainstreamed' post conflict.<sup>2</sup> A daunting challenge, however, is to ensure that the normative imperative of justice equals the essential requirement of promoting peace, ensuring gender equality, and creating an environment that responds to the socio-economic needs of all without any form of marginalisation.

This thesis therefore asks, what transitional justice means for women in post-conflict situations in two African countries: Sierra Leone and Liberia. What policy or legal frameworks exist for women to ensure gender justice post-conflict? How effective is the implementation of the UN Women, Peace and Security Council Resolution<sup>3</sup> in promoting 'gender justice' for women post-

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<sup>1</sup> Soma Chatterji, *Gender and Conflict* (UBS 2006), p. xiii.

<sup>2</sup> Kieran McEvoy, 'Beyond Legalism: Towards a Thicker Understanding of Transitional Justice' (2007) 34:4 *Journal of Law and Society* 412, cited in Jelena Subotic, 'The Transformation of International Transitional Justice Advocacy' (2012) 6:1 *International Journal of Transitional Justice* 106.

<sup>3</sup> Security Council Resolution 1325 (2000) [on Women, Peace and Security] (adopted 31 October 2000) S/RES/1325 <<http://www.unhcr.org/refworld/docid/3b00f4672e.html>> accessed 18 September 2010.

conflict in Africa? And to what extent can the Resolution deliver on women's political and socio-economic rights post-conflict? This thesis contests the efficaciousness of United Nations Security Council Resolutions 1325<sup>4</sup> and 1820<sup>5</sup> in responding to women's post-conflict needs in Africa, and demonstrates this by analysing the post-conflict experiences of women and state responses in Liberia and Sierra Leone.

The primary argument is that, post-conflict, it is important that existing legal frameworks and institutions take into consideration the peculiar needs of women victims and actors of war, so as to be able to respond adequately to their situations, promote gender justice, and further the enjoyment of women's human rights. Gender justice within the context of this thesis, therefore, looks beyond prosecutorial justice interventions to incorporate a broader concept that can ensure an effective and adequate legal and institutional framework; one which can guarantee gender equality, adequate protection, representation, and participation, and also respond to the different material gains of people coming out of conflict, in particular women. This form of holistic perspective has the potential to support gender accountability mechanisms that can further promote women's economic and social rights and better post-conflict transformation.

## **2. Methodology**

In resolving the above questions, this thesis adopts a critical feminist and social-legal perspective in its analysis. For the norms of the Women, Peace and Security (WPS) to be meaningful, they

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<sup>4</sup> *ibid.*

<sup>5</sup> Security Council Resolution 1820 [on acts of sexual violence against civilians in armed conflicts] (adopted 19 June 2008) S/RES/1820 <<http://www.unhcr.org/refworld/docid/485bbca72.html>> accessed 18 September 2010.

cannot be understood solely as abstract moral principles or a series of legal texts without being grounded in the reality of people who are inherently the end users. Rather, it is critical to explore how the principles are manifested through the complex social processes of post-conflict situations. In doing so, this thesis uses the grounded theory approach<sup>6</sup> by gathering experiences through both field research and existing literature and matching these with existing legal frameworks to support women in post-conflict integration. The aim is to assess the implementation of the UN Women, Peace and Security architecture in local contexts through the lives of women who have experienced the effects of conflict in Liberia and Sierra Leone. This thesis questions the validity of the WPS agenda through a critical feminist and legal theory lens.

The response to civil wars in Liberia and Sierra Leone represent experiments in international statecraft. The conflicts in both countries threatened the stability of West Africa and thus attracted global attention in the 1990s, making the United Nations, Organisation of African Unity (OAU) and the Economic Community of West Africa States (ECOWAS) amongst others to commit resources towards ending war and supporting state rebuilding processes.

In view of this, the developments in these two West African countries provide opportunities to assess how gender questions fit into global responses in fragile states. They also allow the assessment of the efficacy of human rights and humanitarian laws for women both as victims and actors of war, and the extent to which the state can support the protection of women's human rights and gender justice, particularly at post-conflict.

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<sup>6</sup> Agenete Weis Bentzon, Anne Hellum, Julie Stewart, Welshman Ncube, and Torben Agersnap, *Pursuing Grounded Theory in Law: South–North Experience in Developing Women's Law* (Mond Books 1998) 150.

The thesis aim is not to provide a comparative analysis of the development post conflicts in both countries but rather to assess each country's context in detail, along with their responses to gender questions.

### **3. Motivation**

The motivation for this study derives from several sources, especially: my previous experience with women in conflict zones in Nigeria; the quest for justice; the need to contribute to a comprehensive feminist socio-legal text addressing national gender justice post-conflict; and the need to frame this within regional and international norms. The study will thus contribute to broadening feminist understanding of existing legal frameworks and institutions supporting post-conflict transformation in the domestic context where the international framework on WPS is expected to be expressed. It also hopes to measure the promise of rights against the practical realisation of those rights. I therefore see this as an effort to promote discourse that may inspire the redefinition of post-conflict processes to better respond to women's needs in Africa.

### **4. Background**

Armed conflict is complex in nature;<sup>7</sup> this has been a critical challenge to development and social justice. War is multi-dimensional and gendered, making post-conflict policy interventions and engagement a major concern. Armed conflict manifests its gendered nature in several ways: it perpetuates inequalities, exacerbates suffering, promotes discrimination, marginalises women

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<sup>7</sup>Amani El-Jack, 'Gender and Armed Conflict Overview Report' (Institute of Development Studies 2003) 8  
<<http://konsnet.dk/multisites/konsnet/images/konsnet/pdf/CEP-Conflict-Report.pdf>> accessed 15 September 2010.

and minority men, and further limits the enjoyment of human rights.<sup>8</sup> The recent development in humanitarian law jurisprudence has contributed to a broader understanding of the impact of armed conflict on women. It has supported the integration and redefinition of some specific gender and sexual crimes based on women's experiences of war, as demonstrated in the laudable decisions of international tribunals and special or hybrid criminal courts.<sup>9</sup>

The UN Security Council has made specific contributions to gender sensitive developments in human rights law through the adoption of the UN Women, Peace and Security Resolutions.<sup>10</sup> These address, amongst others things, the need for state parties to take steps to prevent further violations of women's rights in conflict situations, and to protect and ensure women's participation in post-conflict reconstruction processes.<sup>11</sup> Other regional and national frameworks have also been developed to address gender issues in conflict and post-conflict situations.<sup>12</sup>

As a continent, Africa has experienced intractable conflict. Its conflict has been characterised as some of the world's 'bloodiest',<sup>13</sup> with grave consequences for its population. Some of the worst

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<sup>8</sup> Fionnuala Ni Aolain, Dina Francesca Haynes, and Naomi Cahn, 'On the Frontlines: Gender, War, and the Post-Conflict Process' (Oxford University Press 2011) 28.

<sup>9</sup> Kelly Askin, 'Prosecuting Wartime Rape And Other Gender-Related Crimes Under International Law: Extraordinary Advances, Enduring Obstacles' (2003) *Berkeley Journal of International Law* 288. See also *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T (2 September 1998), where the Trial Chamber affirms that 'acts of rape and sexual violence, as other acts of serious bodily and mental harm committed against the Tutsi, reflected the determination to make Tutsi women suffer and to mutilate them even before killing them, the intent being to destroy the Tutsi group while inflicting acute suffering on its members in the process' [733]. See also *Prosecutor v. Furundzija* (Indictment, Amended-Redacted) IT-95- 17/1-PT (2 June 1998).

<sup>10</sup> Diane Otto, 'The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade' (2009) 2 *Melbourne Journal of International Law* 2.

<sup>11</sup> See UNSCR 1325 Clause 9.

<sup>12</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003) CAB/LEG/66.6 <[www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf](http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf)> accessed 20 July 2010.

<sup>13</sup> Jefferey Gettleman, 'Africa's Forever Wars: Why the Continent's Conflicts Never End' (March/April 2010) *Foreign Policy* <[http://www.foreignpolicy.com/articles/2010/02/22/africas\\_forever\\_wars](http://www.foreignpolicy.com/articles/2010/02/22/africas_forever_wars)> accessed on 10



consequences are the arbitrary attacks that have led to the deaths or injury of innumerable people.<sup>14</sup> Of the ten countries<sup>15</sup> producing the world's most refugees, four are African.<sup>16</sup> As such, it has become a key place to test the efficacy of some of the Women, Peace and Security frameworks.

African women and girls have been victims of these conflicts, whether as combatants, refugees, or internally displaced persons.<sup>17</sup> Accounts of their experiences show that they have undergone destitution, coupled with physical and mental insecurity, as a result of prolonged suffering of exclusion, support and protection.<sup>18</sup> This group has experienced the untold hardships of 'sexual violence and bodily assault as part of the spoils of war'.<sup>19</sup> Even where the propensity for war is attenuated, the situation remains unchanged; women's tales remain the same: a 'continuum of violence from the bedroom to the battlefield'.<sup>20</sup> Therefore, the implementation of the WPS agenda in Africa is critical in supporting women's reintegration and assessing post-conflict social justice. This thesis will draw a direct link between post-conflict legal and institutional reform

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September 2010. See also Ibrahim A. Elbadawi and Nicholas Sambanis, 'How Much War Will We See? Explaining the Prevalence of Civil War' (2002) 46:3 *Journal of Conflict Resolution* 307.

<sup>14</sup> F.T. Holst-Roness, 'Violence Against Girls in Africa, Second International Policy Conference on the African Child' (Addis Ababa, 11-12 May 2006) *International Committee of Red Cross (ICRC)*. <<http://www.icrc.org/eng/resources/documents/misc/violence-girls-conference-110506.htm>> accessed 18 September 2012.

<sup>15</sup> According to the United Nations High Commission for Refugees (2011 Regional Operational Profile, Africa), in 2010 Sub-Saharan Africa hosted over two million Refugees, a significant reduction from the 3.4 million recorded in 2000. See <<http://www.unhcr.org/pages/4a02d7fd6.html>> accessed the 21st October 2011.

<sup>16</sup> See UNCHR, 'Global Trend 2010' <<http://www.unhcr.org/cgi-bin/texis/vtx/home/opensslPDFViewer.html?docid=4dfa11499&query=highest>> accessed 21 October 2011.

<sup>17</sup> Karin Koen, 'Claiming Space: Reconfiguring Women's Roles in Post-Conflict Situations' (2006) 121 *Occasional Paper* 3.

<sup>18</sup> T. Sideris, 'Women and Apartheid; Collective trauma and social reconstruction' (1998) 93 *The Way Supplement* 80-90. See also T. Sideris in 'War, Gender and Culture: Mozambican Women Refugee' (2003) 56 *Social Science and Medicine* 713-724.

<sup>19</sup> Koen (n 17) 3.

<sup>20</sup> C. Cockburn, *The space between us: Negotiating gender and national identities in conflict* (Zed Books 1998) 8, cited in Koen (n 17).

processes and the potentials of protecting women's human rights and increasing social capital for women.

## 5. Background Context on Sierra Leone and Liberia

Sierra Leone and Liberia, both West African countries, were the theatres of two of the deadliest wars in Africa. In both countries, various human rights abuses were recorded, including rape, murder, abduction, forced labour, sexual assault, disembowelment, and the use of child soldiers and youths to perpetrate atrocities against civilians and other crimes against humanity.<sup>21</sup> The historical narrative of the war shows that a culture of impunity contributed to the gravity of the human rights violations that took place during the conflict.<sup>22</sup> For example, in classifying both countries as failed states, Scott emphasises that they both have negative histories of leaders who ruled through a culture of impunity,<sup>23</sup> and as a result of this, the leadership were unable to support the security of their people. Scott's contributions show that in Liberia this form of leadership led to the invasion of rebels, and also that disgruntled governmental figures took advantage of the situation to take control of key state resources and commit grave human rights violations.<sup>24</sup> The effect no doubt impacted negatively on women's human rights, with women's bodies becoming sites of war and tools in the hands of the warring forces. Reports also show a nexus between the causes of the Liberian war and those of Sierra Leone. There were claims that

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<sup>21</sup> Human Rights Watch, 'Back to the Brink: War Crimes by Liberian Government and Rebels: A call for Greater International Attention on Liberia and the Sub Region' <[http://www.hrw.org/reports/2002/Liberia/Jamie O Cornell](http://www.hrw.org/reports/2002/Liberia/Jamie%20Cornell)> accessed 20 September 2011. See also the Human Rights Watch Report, 'We will kill you if you Cry: Sexual Violence in the Sierra Leone Conflict' (January 2003) vol 15, No 1 (A).

<sup>22</sup> Rena L. Scott, "Moving from Impunity to Accountability in Post-War Liberia: Possibilities, Cautions, and Challenges" (2005) 33.3 *International Journal of Legal Information* 347- 417 <<http://scholarship.law.cornell.edu/ijli/vol33/iss3/5>> accessed 18 September.

<sup>23</sup> *ibid* 362.

<sup>24</sup> *ibid* 362.

rebels and veterans of the Liberian Civil War, the majority of Sierra Leonean parentage, led the strike from the Liberian border into Sierra Leone.<sup>25</sup>

## 6. Status of Women in Sierra Leone and Liberia

### a. Sierra Leone

Sierra Leone comprises seventeen ethnic groups, with Mende and Temne being the largest. The majority of the population is of Muslim faith,<sup>26</sup> while less than 10% are Christians and 30% believe in indigenous traditional religions. The languages spoken are English, Mende, and Krio.<sup>27</sup>

The history of Sierra Leone reveals that the situation of women has been one of subordination to men. Women's roles have been limited in the political and economic spheres, and in Sierra Leone's hierarchical culture, it is primarily the male elders who rule, excluding the females.<sup>28</sup> The political history of women in Sierra Leone also shows that women of Krio origin were the only group of women who, because of their economic power, were visible in the political arena in the early period before independence.<sup>29</sup> Very few women participated in governance; for

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<sup>25</sup> *ibid* 362.

<sup>26</sup> Sierra Leone has a large population of Muslims; it is estimated that about 60% of the population are Muslims.

<sup>27</sup> Irving Kaplan et al., *Area Handbook for Sierra Leone* (American University Press 1976), vii.

<sup>28</sup> Sierra Leone Combined initial, second, third, fourth and fifth periodic reports for Consideration under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women 14 December 2006 CEDAW/C/SLE/5, hereinafter called Sierra Leone CEDAW Report. See also Chris Coulter, *Bush Wives and Girls Soldiers: Women's lives through war and peace in Sierra Leone* (Cornell University Press 2009) 43.

<sup>29</sup> See LaRay Denzer, 'Women in Freetown Politics 1914-1961, A Preliminary Study,' in M. Last et al. (eds), 'Sierra Leone 1787-1987: Two Centuries of Intellectual Life,' (1987) 57:4 *Journal of the International African Institute*, cited in Witness to Truth, Report of Sierra Leone Truth and Reconciliation Commission, Volume 3B (2004) (hereinafter called 'SLTRC Report 3B') 94<<http://www.sierra-leone.org/Other-Conflict/TRCVolume3B.pdf>> accessed 28 September 2009..

example, only two women participated in the constitutional talks<sup>30</sup> that led to independence. However, upon achieving independence in 1961, Cummings-John was the only woman and the first black African woman to govern a capital city on the continent.<sup>31</sup>

This gender inequality continued post-independence until the civil war, and still exists today in Sierra Leone. Apart from token political positions, opportunities for women and girls are limited, and at worst non-existent, particularly in rural areas. The systemic discrimination that exists from childhood for females in Sierra Leone has resulted in poor gender indicators;<sup>32</sup> for example, on gender disparity in education, the UNDP Human Development Index (HDI) report showed that fewer girls attend school and their education is often discontinued at an earlier age than boys. It further showed that the number of women in parliament is relatively low when compared to men and reveals poor indicators for maternal mortality ratios.

The HDI above also shows that for every 100,000 live births, 970 women die from pregnancy-related causes.<sup>33</sup> Furthermore, as noted in the report submitted to the CEDAW Committee by the government of Sierra Leone, one of the major challenges to women's health and causes of maternal deaths in Sierra Leone is traditional practices and ideas, particularly the belief that

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<sup>30</sup> See LaRay Denzer, *Constance Cummings-John: Memoirs of a Krio Leader* (Ibadan, Nigeria: Sam Bookman, 1995) (hereafter *Cummings-John: Memoirs of a Krio Leader*), in SLTRC Report 3B' 95. See also the Sierra Leone Government CEDAW Report 16.

<sup>31</sup> *ibid.* Alongside Cummings-John, notable women political leaders of this era include Adelaide, Casely Hayford, Stella Thomas Marke, Edna S. Elliot-Horton, Lorine E. Miller, Lottie Black, Mabel Dove, Nancy Koroma, and many others.

<sup>32</sup> See UNDP Human Development Index Report (2011) <<http://hdrstats.undp.org/images/explanations/SLE.pdf>> accessed the 12 June 2012.

<sup>33</sup> *ibid.* See also World Bank Report, 'Reproductive Health at a glance Sierra Leone' (April 2011) <<http://worldbank.org/INTPRH/Resources/376374-1303736328719/SierraLeone42211web.pdf>> 20 August 2012.

women are more respected in society when they have many children. Women therefore strive to meet this societal expectation and in turn endanger their health and wellbeing.<sup>34</sup>

The majority of women in Sierra Leone have undergone female genital cutting; even in recent years women who do not want to undergo this process are abducted and forced by female members of the community.<sup>35</sup> It is considered a cultural rite of passage marking the movement from childhood to puberty. The prevalent type of female cutting is clitoridectomy and excision, with devastating effects that can include recurrent urinary tract infections, pelvic infections, and other health-related complications.<sup>36</sup> In *Fornah v Secretary of State for the Home Department*,<sup>37</sup> Ms Fornah, a citizen of Sierra Leone, was refused application for asylum and she brought an appeal on the ground that if she was returned from the UK to her home country, she would be subjected to the procedure of female genital mutilation. The Supreme Court considered FGM as a procedure amounting either to torture or to other cruel, inhuman, or degrading treatment.

As Castillejo observes, Sierra Leone's social identity is rooted in family membership, which is located within the context of customary communities. The basic rights determining land, justice, and family rights are drawn from these communities, giving the chief and elders in the community the overall determining rights.<sup>38</sup>

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<sup>34</sup> Sierra Leone CEDAW Report 14.

<sup>35</sup> Olayinka Koso-Thomas, *The Circumcision of Women: A strategy for Eradication* (Zed Books 1992) 19, in Human Rights Watch, 'We'll kill you if you cry: Sexual Violence in the Sierra Leone Conflict,' vol. 15 no. 1 (A) (January 2003) 24

<sup>36</sup> *ibid.*

<sup>37</sup> *Fornah v Secretary of State for the Home Department* [2006] UKHL

<<http://www.asylumlawdatabase.eu/sites/asylumlawdatabase.eu/files/aldfiles/SSHD%20v%20K%20and%20Fornah.pdf>> 12 June 2012.

<sup>38</sup> Clare Castillejo 'Strengthening Women's Citizenship in the context of State Building: The Experience of Sierra Leone' (2008) 69 FRIDGE Working Paper 2.

*b. Liberia*

Liberia has sixteen major ethnic groups spread across fifteen counties. As in Sierra Leone, gender inequality exists, but differently – here it is not only limited to inequalities between male and female. ‘Intra-gender inequalities’ also exist, whereby women are classified into two categories, the civilised and the native, which leave some women in particularly disadvantaged positions.<sup>39</sup> These expressions are also found in the laws of Liberia.<sup>40</sup> Liberia was founded by freed African slaves who ironically became the ‘ruling class’, which has continued to rule to date.<sup>41</sup> As noted in the Truth and Reconciliation Committee Report, women can be categorised into four groups: the “settlers” (sometimes referred to as “civilised” – meaning exposed to Western education and norms and not wearing indigenous “lapper” dress); women of Americo-Liberian heritage, some of whom owned property and by that standard were qualified to vote; poor “settler” and the indigenous women’.<sup>42</sup>

The indigenous groups that represent the majority of the population are mainly patrilineal, with ideologies of male dominance.<sup>43</sup> Women were not allowed to vote in Liberia until the 1940s during the time of President Tubman,<sup>44</sup> while the denial of franchise of indigenous women, like their male counterparts, persisted until the 1950s.<sup>45</sup>

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<sup>39</sup> Felicia V. Coleman, ‘Gender Equality and the Rule of Law in Liberia: Statutory Law, Customary Law and the Status of Women’ in Susan H. Williams (ed), *Constituting Equality, Gender Equality and Comparative Constitutional Law* (Cambridge UP 2009) 195-212.

<sup>40</sup> *ibid* 195.

<sup>41</sup> Renal L. Scott (n 22) 417.

<sup>42</sup> Republic of Liberia, ‘Truth and Reconciliation Commission, Volume Three: Women and the Conflict’ (2009) 5<[http://trcofliberia.org/resources/reports/final/volume-three-1\\_layout-1.pdf](http://trcofliberia.org/resources/reports/final/volume-three-1_layout-1.pdf)> accessed 12 September 2009 (hereinafter referred to as LTRC report).

<sup>43</sup> *ibid* 8.

<sup>44</sup> *ibid* 5.

<sup>45</sup> *ibid*.

The subjugation of Liberia's indigenous women was also reflected in the area of marriage; before 1980, the most prominent so-called "civilised" families practiced formal endogamy, resulting in a situation whereby most important government officials were related by kinship and intermarriage. Among indigenous people, groups in the northwest were organised into ranked lineages of "land owners," "commoners," and "slaves." Thus kinship was crucial in determining social status among these groups.<sup>46</sup>

Liberia's chequered history gave women specific gender roles and rendered women ineffective, particularly in decision-making or leadership positions. The adverse effect of this is reflected in education: research has shown that over 80% of women in Liberia are illiterate, despite the country having adopted free compulsory education in 1912.<sup>47</sup>

Female genital cutting (FGC) is traditionally performed on young girls in the northern, western, and central parts of Liberia, particularly in the rural areas. In early 2006, the Minister of Internal Affairs vowed not to discourage the practice of FGC because it was part of Liberia's traditional culture.<sup>48</sup> No law exists to prohibit forced FGC and early marriage of young girls; though the legal age of consent is eighteen, young girls are given into marriage at the age of fourteen in rural areas.<sup>49</sup>

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<sup>46</sup> *ibid* 9.

<sup>47</sup> *ibid* 12.

<sup>48</sup> 'Female Circumcision Sparks Debate' *Daily Observer* (20 February 2006) in Gwendolyn Heaner, 'Religion, Law and Human Rights in Post-Conflict Liberia' (2006) 8 *Afr. Hum. Rts. L.J.* 458-485.

<sup>49</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined initial, 2nd, 3rd, 4th, 5th and 6th periodic reports of States parties / Liberia*, 13 October 2008, CEDAW/C/LBR/6. 34.

As Coleman points out, the existing inequalities during the pre-war period deprived women of the right to education, reproductive health, employment, economic opportunities, and the right to participate in making laws that concern them, as well as engendering poverty; this contributed to the neglect women faced during the fourteen year-long war.<sup>50</sup>

## **7. Context: Why Focus on Sierra Leone and Liberia**

In both countries, interventions by both regional and sub-regional institutions were critical to ending armed conflict and setting up peace agreement negotiations and post-conflict reconstruction. For example, the role the Economic Communities of West Africa Monitoring Group (ECOMOG) peacekeeping forces and UN troops played in the resolution of the conflict and the sustenance of relative peace is well documented.<sup>51</sup> Liberia and Sierra Leone were also two of very few countries to adopt a National Action Plan to respond to the conflict.<sup>52</sup> The National Action Plans are operational tools to ensure that the United Nations Peace and Security Resolutions are integrated in countries' post-war agendas. Apart from this, they have both responded with new legal frameworks and policies to support gender integration in their countries, and new realities are also emerging in minimal development for women; for example there seems to be a slight increase in the number of women in governance in both nations.

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<sup>50</sup> Coleman (n 39) 152.

<sup>51</sup> Funmi Olonisakin, *Peace Keeping in Sierra Leone: The story of the UNAMSIL* (Lynne Rienner Publishers 2008) 23. See also Funmi Olonisakin, 'UN co-operation with regional organizations in peacekeeping: The experience of ECOMOG and UNOMIL in Liberia' (1996) 3.3 *International Peacekeeping* 33-51; Jeremy Levitt 'Humanitarian Intervention by Regional Actors in Internal Conflicts: The Cases of ECOWAS in Liberia and Sierra Leone' (1998) 12 *Temp. Int'l and Comp. L.J.* 334.

<sup>52</sup> See Presidential Statements S/PRST/2004/40 and S/PRST/2005/52 where the UN Security Council called on Member States to support the implementation of Resolution 1325 (2000) through the development of national action plans or other national level strategies. The adoption will enable the country to develop strategic actions, identify priorities and resources, and determine the responsibilities and timeframes to overcome the likely challenges of Resolution 1325.



While acknowledging the peculiarities that exist in both nations' reconstruction processes, it is also true to say that their post-conflict reform processes are similar in nature: both have set up diverse mechanisms to support transitional justice, including the Truth and Reconciliation Commission (TRC), the Disarmament Demobilization Reintegration (DDR) programmes and other mechanisms that also impact on women's rights. The Truth and Reconciliation Commissions (TRC) in both countries focused on addressing the human rights violations that occurred during the wars and both have the mandate of making recommendations to support post-conflict transformations.<sup>53</sup> Both specifically acknowledged the extent of human rights violations suffered by women during the war, while recognising the gender role women play, not only as victims, but also as combatants. Sierra Leone, amongst other mechanisms, set up a Special Court to try major perpetrators of war crimes.<sup>54</sup>

## **8. Theoretical Framework**

This thesis is greatly influenced by feminist methodology. According to De Vault, feminist methodology has three goals: to reveal the diverse experiences of women's lives; to show the factors that have been responsible for their invisibility; and lastly, to seek a methodology that will lead to social change and better the situation of women.<sup>55</sup> This research places the woman victim of armed conflict in Sierra Leone and Liberia at the centre of the analysis and takes a holistic look at the state responses to their situation, particularly post-conflict.

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<sup>53</sup> Liberia Truth and Reconciliation Commission Act (2005) The Truth and Reconciliation Act [No 4, 2000] of Sierra Leone.

<sup>54</sup> Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (Jan. 16, 2002), S.C. Res. 246, U.N. SCOR, 57th Sess., U.N. Doc. S/2002/246, appended to Letter dated 6 March 2002 from the Secretary-General Addressed to the President of the Security Council, app. II (2002).

<sup>55</sup> Marjorie De Vault, 'Talking Back to Sociology, Distinctive Contributions of Feminist Methodology' (1996) 22 *Annual Review of Sociology* 29-50.

Feminist critical theory assists in investigating the process of exclusion, as well as the practical manifestation of discrimination against women in post-conflict Sierra Leone and Liberia. The theory challenges the existing distribution of power and its effect on the subordination of women; as Mills describes, ‘...while “male stream” critical theory tends to reproduce domination by ignoring gender issues, feminist critical theory begins from gender issues to understand and challenge all forms of contemporary subordination, domination, and oppression’.<sup>56</sup>

African feminist theorists have noted that ‘gender construction’ is critical to feminist thinking. Oyewumi, however, argues that gender is a construction of Western feminist scholars. She further argues that by analysing a particular society with a gender construct, scholars create gendered categories and ‘formulate gender into that society’. Oyewumi contends that the process of making gender visible is also a process of creating gender; she therefore sees gender as a creation of imagination and rather calls for a cultural context-dependent feminist analysis that is not abstract but conscious of African women’s realities.<sup>57</sup> However, others opine that gender is essential to feminist discourse, even within Africa. Opposing Oyewumi, Mama posits that the analogy invents an imaginary African community that forecloses the existence of gender, that ample evidence exists that gender has long been one of the central organising principles of pre- and post-colonial African society, and that all identities are gendered.<sup>58</sup>

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<sup>56</sup> Patricia Jagentowicz Mills, ‘Feminist Critical Theory, Reviewed Work(s): *Unruly Practices: Power, Discourse, and Gender in Contemporary Social Theory* by Nancy Fraser *Justice and the Politics of Difference* by Iris Marion Young’ (Summer 1994) 58:2 *Science and Society* 211-217.

<sup>57</sup> Oyewumi Oyeronke, *The Invention of Women; Making an African Sense of Western Gender Discourses* (Regents University of Minnesota 2003) 78

<sup>58</sup> Amina Mama, ‘Challenging Subjects: Gender and Power in African Contexts’ (2001) 5.2 *African Sociological Reviews* 63-73.

There have doubtless been several misconceptions about the construction of gender. Tamale's contribution to gender construction within Africa is more succinct – while she agrees that gender is essential in African feminist discourse, she posits that gender analysis in the African context must integrate a critique of the imperialist notion of gender and the effect of neo-colonialism on gender relations.<sup>59</sup> She insists there must be a multi-focal approach to gender analysis in Africa, which must recognise the dialectical relationship between gender, class, ethnicity, religion, imperialism, and neo-colonialism.<sup>60</sup>

Tamale's contention is re-echoed in Hooks' analysis of black Americans, where she argues that feminism cannot rid society of sexist oppression and male domination if it fails to eradicate the ideology of domination that 'permeates western culture on various levels, as well as [a] commitment to reorganizing the society so that the self-development of the people can take precedence over imperialism, economic expansion and material desires'.<sup>61</sup> Hooks argues further that any analysis devoid of these lacks merit and is superficial.<sup>62</sup> Such a background conceptualisation is extremely useful for the analysis adopted in this research. It allows for a comprehensive interrogation of factors supposedly responsible for the subordinations and marginalisation women suffer during conflicts and afterwards.

Feminist legal theory, on the other hand, has transformed over time, passing through different phases and distinct eras of development. The thesis will look at three different phases. The first is described as the Equality Stage of the 1970s, which focused on the debates surrounding the need

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<sup>59</sup> Sylvia Tamale, *When Hens Begin To Crow: Gender and Parliamentary Politics in Uganda* (Westview Press 1999) 3.

<sup>60</sup> *ibid* 3.

<sup>61</sup> Bell Hooks, *Feminist Theory From Margin to Center* (Pluto Press 2000) 26.

<sup>62</sup> *ibid* 26.

for equality between men and women and the role that the law can play in this regard. The liberal feminist approach insists that ‘the law has a responsibility to fulfil its promise of objective regulation upon which principled decision-making is based’<sup>63</sup> and challenges the rationale behind the unequal treatment existing between men and women, while advocating for legal reform and the dismantling of legal barriers. The discourse during this period focused on doctrinal inclusion and institutional expansion.<sup>64</sup>

The era also saw the inclusion of more women in institutions as key to achieving gender equality outcomes, but did not give much importance to structural change. Some feminists criticise this theory for not addressing the structural background of inequality.<sup>65</sup> Critics argue that liberal feminists implicitly adopt the ‘male yardstick’, failing to understand that the law has been a tool to keep women ‘out and down’, supporting their exclusion through a dominant male hegemony based on gender and sex.<sup>66</sup> The Liberal approach sees ‘special treatment’, for example as accorded to pregnant women, as ultimately promoting neutral outcomes. The feminist liberal approach is premised on the law as objective and impartial and, as such, can lead to justice. Thus, ‘bad laws’ are seen as the problem and not law as usual’.<sup>67</sup> Chamallas observes that the liberal feminist approach ‘remains a dominant feminist influence in the law’.<sup>68</sup>

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<sup>63</sup> Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Melland Schill Studies in International Law 2000) 39; Karen Engle, ‘International Human Rights and Feminism; When Discourses Keep Meeting’ in Doris Buss and Ambreena Manji (eds), *International Law: Modern Feminist Approaches* (Hart Publications 2005) 49.

<sup>64</sup> Engle (n 63) 52.

<sup>65</sup> *ibid* 39. See also Hilaire Barnett, *Introduction to Feminist Jurisprudence* (Cavendish Publishing 1998) 5.

<sup>66</sup> C. Mackinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987) 39.

<sup>67</sup> See S Hardings, *The Science Question in Feminism* (Cornell University Press 1986) 24-29. See also Charlesworth and Chinkin (n 63) 38.

<sup>68</sup> Marta Chamallas, *Feminist Legal Theory* (2<sup>nd</sup> edn, Aspen 2003) 39.

The second is the 1980s era of radical feminist legal theory, which was influenced by several issues, including the need for women's representation, the feminisation of poverty, and arguments concerning gender and cultural difference. As Barnett notes, there is no single analysis; rather this stage 'centres on the construction of the society as patriarchal in its broad sense'.<sup>69</sup> According to Mackinnon, social relations between men and women are organised in such a way that allows for women's subordination.<sup>70</sup> The radical feminist approach asserted that the law's role should be to support 'freedom from systematic subordination without regard to sex'.<sup>71</sup> Thus, radical feminists argued that unless the law became sensitive to the realities of women and the violations women suffer, there could be no genuine transformation. Radical feminists challenged liberal thinking on the discourse of private and public dichotomies, highlighting women's subordination and arguing that the public can be identified, on the one hand, with the state and the law, and on the other with the private and the family.<sup>72</sup> Radical feminists called for greater participation of the public in the private sphere, where women face more inequality.

The third stage, characterised by Third World debates and the equality and difference debates of the 1980s, exposed the blindness of feminist legal theory to the situation of Third World feminists.<sup>73</sup> This broadened the discussion to include diversity. Third World feminism of the 1980s was based on theories responding to the different historical contexts of women in the Global South and women of colour in the North.<sup>74</sup> The Third World movement argued that

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<sup>69</sup> Barnett (n 65) 6.

<sup>70</sup> C. Mackinnon, *Sexual Harassment of Working Women* (Yale University Press 1979) in Charlesworth and Chinkin (n 63) 43.

<sup>71</sup> *ibid* 43.

<sup>72</sup> C. Mackinnon, *Towards a Feminist Theory of the State* (Harvard University Press 1989) 187-90.

<sup>73</sup> Engle (n 63) 58

<sup>74</sup> See Charlesworth and Chinkin (n 63) 46.

earlier feminist theories ignored the reality of their experiences, and that while gender and class are dominant in the oppression of women in the West, other women in other places also have to cope with oppression based on race, culture and imperialism.<sup>75</sup> Mohanty likens Western feminist interest in the non-Western world with that of a ‘tourist, international consumer, and an open-minded explorer’.<sup>76</sup> This criticism of victimising Third World women is longstanding. Mohanty argues that Western feminists, through their writings, engage in an act of self-representation by describing Third World women only ‘in terms of disadvantage.’<sup>77</sup> Mutua follows this analysis in criticising the Western description of the situation of the African woman within human rights normative framework – he contends that the images of African women project them as ‘victims’ and men as ‘savages’.<sup>78</sup> Thus, while women in the West no doubt suffer oppression as a result of their gender and class, Third World women suffer the same marginalisation along with oppression based on race and imperialism.<sup>79</sup>

Third World feminists argue that in tracing the impact of Western feminism on global development, the Third World and in particular its women have not benefited from feminist intervention, since the conditions of ordinary citizens have not changed as much.<sup>80</sup> Thus, there is a need to canvass for a form of feminism that speaks to everyone.<sup>81</sup> Nzegwu argues that while it

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<sup>75</sup> C. Johnson-Odim, ‘Common themes, different context’ in C. Mohanty, A. Russo, and L. Torres (eds), *Third World Women and the Politics of Feminism* (Indiana University Press 1991) 341 in Charlesworth and Chinkin (n 63) 47.

<sup>76</sup> C. Mohanty, ‘Under the Western Eyes: Revisiting Feminist Solidarity through Anti Capitalist Struggles’ (2003) 28:1 *Signs and Journal of Women Culture Society* 499-535.

<sup>77</sup> Chandra Talpade Mohanty, ‘Under Western Eyes: Feminist Scholarship and Colonial Discourses’ (1988) 30 *Feminist Review* 61-88.

<sup>78</sup> M. Mutua, ‘Savage Victims and Saviours: The Metaphor of Human Rights,’ (2001) 42 *Harvard International Law Journal* 201-245.

<sup>79</sup> J. Oloka-Oyango and S. Tamale, ‘The Personal is Political or Why Women’s Rights are Indeed Human Rights: African Perspectives on International Feminism’ (1995) 17.691 *Human Rights Quarterly* 725-730.

<sup>80</sup> Amina Mama, ‘Critical Connections feminist studies in African Context’ in Andrea Cornwall and Elizabeth Harrison (eds), *Feminism in Development, Contradictions, Contestations and Challenges* (Zed books 2006) 150.

<sup>81</sup> Hooks (n 61) xii-xiv.

is acknowledged that feminism has made important contributions in redefining gender relations, its individualistic conception of equality remains ‘a non-liberatory concept’ for the dual sex systems of many African societies. She notes that patriarchy is endemic and has installed an ideology of dominance creating a dichotomy in human activity into the public and private spheres, and putting women in subordinate positions.<sup>82</sup> The Third World discussions made immense contributions to the feminist debates; focus subsequently shifted to gender and gender roles as constructed through race, class, culture and the need for a diversity of feminist approaches.<sup>83</sup> The prominent argument of the 1990s was therefore centred on alternative voices demanding recognition of diversity amongst women.

As evident from above, feminist legal theorists believe that the law plays a critical role in ‘underpinning and supporting existing power relations in the society’,<sup>84</sup> requiring the feminist legal project ‘to encompass both major theoretical questions and practical issues’<sup>85</sup> relating to the effectiveness of legal frameworks as an instrument for social and institutional change. Feminist legal theory, therefore, is based on the fact that laws contribute to women’s historical insubordination, and is therefore dedicated to reworking the law and its approach to gender.<sup>86</sup> Thus, in order to understand the particular instances of women’s exclusion in law, a theoretical understanding of women’s subordination is needed, since the law itself constitutes and is constituted by social relations; power relations between men and women are both reflected and

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<sup>82</sup> Nkiru Nzegwu, ‘Gender Equality in a Dual–Sex system: The Case of Onitsha’ (January 1994) *Jenda; A Journal of Culture and African Women Studies* 73-95.

<sup>83</sup> Linda Alcoff, ‘Cultural Feminism versus Post-Structuralism: The Identity Crisis in Feminist Theory’ (Spring 1988) 13:3 *Signs* 405-436.

<sup>84</sup> Nicola Lacey, ‘Feminist Legal Theory Women’s Law: An Introduction to Feminist Jurisprudence by Tove Stang Dahl; Abortion and Divorce in Western Law by Mary Ann Glendon; Feminism Unmodified by Catherine A. MacKinnon’ (Autumn 1989) 9.3 *Oxford Journal of Legal Studies* 383-394

<sup>85</sup> *ibid* 386.

<sup>86</sup> Charlesworth and Chinkin (n 63) 39.

manifested within the law's claims to objectivity and neutrality.<sup>87</sup> Chamallas postulates something similar, affirming that feminist legal theory helps to understand 'why and how' gender is critical to daily life; she argues that gender matters to the development of the law and how men and women are affected by its power relations.<sup>88</sup> She further emphasises that feminist legal theory is critical to addressing important queries about the construction of women's personal identities.<sup>89</sup>

In looking at feminist jurisprudence in the African context, several factors have come to marginalise women from equal access to laws promoting women's rights and the full realisation of their identity.<sup>90</sup> Observing the similarities between the feminist and the African approaches, Murray contends that international law is based on 'opposing dichotomies' that parallel the position of non-Western states with that of women.<sup>91</sup> Thus, when analysing the international norms relating to gender and armed conflict, it is important to see how the construction of these norms impact on women's ability to identify the entry points or challenges for women post-conflict.

The rationale for utilising the above feminist perspectives is the particularly distinctive methodology often adopted in feminist research, which challenges 'the often unseen androcentric or masculine biases in the way knowledge has traditionally been constructed in all disciplines'.<sup>92</sup>

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<sup>87</sup> Stella Tarrant, 'Something is Pushing them to the Side of their Own Line: A Feminist Critique of International Law', cited in Nagaire Naffine, *Gender Justice* (Ashgate 1990) 81-85.

<sup>88</sup> Chamallas (n 68) xx.

<sup>89</sup> *ibid* xx.

<sup>90</sup> Mama (n 58) 69.

<sup>91</sup> Rachel Murray, *The African Commission on Human and Peoples' Rights and International Law* (Hart Publishing 2000) 3.

<sup>92</sup> J.A. Tickner, 'Feminism meets International Relations; some methodological issues' in B. Ackerly and J. True, (eds), *Feminist Methodologies for International Relations* (Cambridge University Press 2006).



Furthermore, a feminist perspective also broadens our understanding and worldview by removing the ‘covers and blinders that obscure knowledge and observation’.<sup>93</sup> In this instance, the thesis contemplates a critical assessment of the law and institutions supporting post-conflict gender reconstruction and reintegration processes; feminist legal theory will therefore uncover the role played by law and institutions in furthering gender inequality and discrimination, even in post-conflict contexts. One of the effects of armed conflict on women in Africa has been the feminisation of poverty. Over the past decade, most African countries have experienced armed conflict as a result of economic and political crises; thus, any feminist discourse addressing conflict in the African context must take into consideration issues of socio-economic rights and gender justice within African patriarchal society. This form of intervention echoes Tamale’s observation that the feminism emerging in Africa is ‘distinctly heterosexual, pro-natal and concerned with bread, butter and power issues’.<sup>94</sup> This thesis, therefore, looks at the form of discrimination suffered by women in armed conflict, the situation of women post-conflict, and how the law is responding to their civil, political, and socio-economic needs.

This thesis questions the very core assumptions of states’ responsibilities: to protect their citizens and support the legal institutions to promote human rights, gender justice and a violence-free environment for women post-conflict. While doing this, the thesis adopts Tamale’s approach of analysing institutions responding to gender from two sides. Tamale places the ‘institutional character of gender’ on one side and the ‘gender character of institutions’ on the other. She posits that such an analysis takes into account the micro and macro aspects of gender relations, allowing for ‘a comprehensive and perspicacious examination of material forces’ that works to

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<sup>93</sup> M. Millam and R. Moss Kanter, *Another Voice: Feminist perspectives on Social life and Social Science* (Doubleday 1975) viii.

<sup>94</sup>Tamale (n 59) 7.

further marginalise women.<sup>95</sup> Since state institutions have a role to play in implementing the Women, Peace and Security Agenda, this thesis will look at the gender character of the institution and how the state is promoting gender justice in its institutions. The above feminist theories can be useful in critiquing existing institutions and proffering a re-working of the order to support better post-conflict transformation.

## 9. Literature Review

The 1990s witnessed a growing body of literature documenting the voices and experiences of women in conflict.<sup>96</sup> The identities of women in conflict were reconfigured; they were seen not only as passive actors in war and post-conflict reconstruction, but also victims, actors, and perpetrators.<sup>97</sup> Feminist writers, particularly Mackinnon,<sup>98</sup> Copelon,<sup>99</sup> and Enloe,<sup>100</sup> amongst others, challenged women's exclusion in early war discourse, observing that the neglect of gender in war is a compromise put into effect by both state and international actors who propagate the old patriarchal order by downplaying the differentiation that exists in times of

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<sup>95</sup> Ibid 28.

<sup>96</sup> Dyan Mazurana, Susan R. McKay, and International Center for Human Rights and Democratic Development, 'Women in Peace Building' in *Essays on Human Rights and Democratic Development, No 8* (International Center for Human Rights and Democratic Development [ICHRDD] 1999). See also Human Rights Watch, 'Leave No One to tell the Story: Genocide in Rwanda' (New York HRW 1999); Meredith Turshen and Clotilde Twagiraamariya, *What women do in wartime: Gender and Conflict in Africa* (Zed Books 1998).

<sup>97</sup> Turshen and Twagiraamariya (n 96) 2.

<sup>98</sup> Catherine A. Mackinnon, 'Crimes of War, Crimes of Peace' in Stephen Shute et al. (eds), *Human Rights: The Oxford Amnesty Lectures 1993* (Basic Schools 1993).

<sup>99</sup> R. Copelon, 'Gendered War Crimes: Re-conceptualizing Rape in Time of War' in J. Peters and A. Wolfer (eds), *Women's Rights Human Rights* (Routledge 1995).

<sup>100</sup> C. Enloe, 'Feminist Thinking about War, Militarization and Peace' in Susie M. Jacobs, Ruth Jacobson, and Jen Marchbank (eds), *States of Conflict: Gender, Violence, and Resistance* (Zed Books 2000) 49; C. Enloe, *Does Khaki Become You? The militarization women's lives* (South End Press 1983).

war.<sup>101</sup> In modern civil war, the experiences shared across Africa show that ‘women are also combatants; women resist, fight back, they take sides, and fight amongst themselves’.<sup>102</sup>

Moser and Clark, meanwhile, focus attention on the agency and identity of women and men throughout violent conflict.<sup>103</sup> Moser proposes a framework identifying four causal factors at four different levels: ‘structural, institutional, interpersonal and individual’,<sup>104</sup> which are crosscut by gender. This analysis is useful to understanding the agency involved in different forms of violence, and the causes of and responses to conflicts. Moran’s recent contribution demonstrates that since the Cold War, new ideas about the way masculinity and femininity change during war and mobilise gender in different ways have emerged.<sup>105</sup> The shift in the discourse is critical, because without due consideration of this redefinition of gender roles in conflict, post-conflict reformulation will continue to marginalise women.

Likewise, Gardam and Jarvis’s work stems from the belief that armed conflict exacerbates gender inequality; they establish that endemic discrimination is one of the most significant factors leading to disproportionate impacts from armed conflict.<sup>106</sup> While this is true, Leatherman opines that the causes and manifestations of gender inequality can be located within a social construction, which varies across cultures;<sup>107</sup> furthermore, the perception of victims in armed

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<sup>101</sup> See Cynthia Enloe, ‘Foreword’ in Robin M. Chandler, Lihua Wang, and Linda K Fuller (eds), *Women, War and Violence, Personal Perspectives and Global Activism* (Palgrave Macmillan 2010) vii.

<sup>102</sup> *ibid* 1.

<sup>103</sup> Caroline Moser and Fiona Clark, ‘Victims, Perpetrators or Actors? Gender, Armed Conflict and Political Violence’ (Zed Books 2001) 4.

<sup>104</sup> *ibid* 40.

<sup>105</sup> Mary Moran, ‘Gender Militarism, and Peace-Building: Projects of the Postconflict Moment’ (October 2010) 39 *Annual Review of Anthropology* 261-274.

<sup>106</sup> Judith Gardam and Michelle Jarvis, *Women, Armed Conflict and International Humanitarian Law* (Kwuler Law International 2001) 36.

<sup>107</sup> Janie Leatherman, *Sexual Violence and Armed Conflict* (Polity Press 2011) 10.

conflict may differ, and this may impact on how they are treated.<sup>108</sup> In the context of war, women are not homogeneous. Experiences from warring societies show that the situation and effect of conflict on women are never the same; for example, women with access to wealth may negotiate their freedom during conflict.

Sharoni assesses the gender biases in the context of Middle East conflicts;<sup>109</sup> Clarke analyses African post-war responses and feminist interpretations;<sup>110</sup> and Goldblatt and Meintjes look at the legacy of political and sexual violence in apartheid South Africa, and women's efforts in post-conflict reconstruction processes.<sup>111</sup> Meintjes, Pillay, and Turshen's work shows that how women are treated after the war has implications for their post-conflict transformation and gender justice.<sup>112</sup> The lessons from these analyses are important for both the investigation of post-conflict efforts in Liberia and Sierra Leone, and the comparative analysis of their transitional justice processes.

The effect of conflict is multifaceted. For instance, more women are heads of households due to demographic change brought on by conflict, and displacement often leads to shifts in gendered roles and responsibilities for women and men, whereby women also become war-widows and single parents, sometimes resulting in poverty and social marginalisation.<sup>113</sup> Studies conducted

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<sup>108</sup> *ibid* 10.

<sup>109</sup> Simona Sharoni, 'Gendered Identities in Conflict: The Israeli-Palestinian Case and Beyond' (1995) 23:3/4 *Women's Studies Quarterly* 117-135.

<sup>110</sup> Yaliwe Clarke, 'Security Sector Reform in Africa: A Lost Opportunity to Deconstruct Militarised Masculinities?' (2008) *Feminist Africa* 49.

<sup>111</sup> Beth Goldblatt and Sheila Meintjes, 'Dealing with the aftermath: sexual violence and the Truth and Reconciliation Commission (1997) 13: 36 *Agenda: Empowering Women for Gender Equity* 36.

<sup>112</sup> Sheila Meintjes, Anu Pillay, and Meredith Turshen, (eds), *The Aftermath: Women in Post Conflict Transformation* (Zed Books, 2002) 10.

<sup>113</sup> Amani El-Jack, 'Gender Perspective on the Management of Small Arms and Light Weapons in Sudan' in El-Jack (n 7) 17.

in Rwanda and Sierra Leone show that women gave sexual gratification in exchange for food,<sup>114</sup> and this exposed them to sexually transmitted diseases. As a result of these violations, women often require important health interventions.<sup>115</sup> Another relevant social problem is HIV/AIDS, which is prevalent in armed conflict situations. At an International Conference on HIV/AIDS, Stephen Lewis, former UN Ambassador to Africa for AIDS, observed that conflict, violence, and the virus go together.<sup>116</sup> Disruption and displacement caused by conflict may lead to changes in sexual behaviours, increases in the rate of sexual abuse (e.g. by armed forces), and other social incapacitation.<sup>117</sup>

Research also shows that domestic violence increases during wartime.<sup>118</sup> Women's experiences in war are multidimensional – they are physically and sexually abused by male spouses who have been humbled because of their guilt and anger at not fulfilling their perceived responsibility of protecting 'their' women.<sup>119</sup> The UN Special Rapporteur on Violence Against Women (VAW) has noted that increased GBV during and after conflict often reflects patterns of violence that existed in the pre-conflict period.<sup>120</sup> Alongside these, armed conflict has other negative effects on women including loss of family members, social position, and other debilitating effects. Scholars allude to the fact that violence in armed conflict may have different effects on men and women,

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<sup>114</sup> J.A. Benjamin, 'Conflict, Post-conflict and HIV/AIDS – The Gender Connections: Women, War and HIV/AIDS: West Africa and the Great lakes', Women's Commission for Refugee women and children, presented at the World Bank, International Women's Day, March 2001

<<http://www.worldbank.org/html/prmge/womensmonth/benjaminic.doc>> accessed 18 June 2012.

<sup>115</sup> Gardam and Jarvis (n 106) 43.

<sup>116</sup> Lawrence K. Altmann, 'UN Official Assails South Africa on its Response to AIDS' *The New York Times* (19 August 2006) in Ruth Rubio-Marin, *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge UP 2009) 53.

<sup>117</sup> Margaret Urban Walker, 'Gender and Violence in Focus' in Rubio-Marin (n 116) 53.

<sup>118</sup> Gardam and Jarvis, (n 106) 30.

<sup>119</sup> El-Jack (n 7) 21.

<sup>120</sup> Radika Coomaraswamy, Report of the Special Rapporteur on Violence Against Women its Causes and Consequences, submitted in accordance with the Commission on Human Right Resolution 2000/45 on Violence Against Women perpetrated and or condoned by the state during times of armed conflict (1997-2000) E/CN/2001/73.

and the position a person occupies in society can also determine the extent to which victims can cope with the disruption that comes with conflict.<sup>121</sup>

However, Nesiah contends that how women are presented after war needs to be interrogated as well, arguing that most feminist writing focuses on bodily injury, excluding other critical areas of struggle that could attract post-conflict attention.<sup>122</sup> There is a possibility that feminist transitional justice aspirations will thus become obscured in sexual crimes discourse, omitting the other structural and ideological consequences – like representation – that can expand women’s opportunities in transitional justice.<sup>123</sup> Moreover, Nesiah looked at women’s internal displacement and forced removal in Peru, Sierra Leone, South Africa, and Rwanda – and the implications of these on women’s post-conflict reconstruction – arguing that transitional justice mechanisms excluded these critical issues.<sup>124</sup> In a similar vein, Daley’s<sup>125</sup> work shows how the multidimensional gender effect of displacement plays out after the war and its implication for women.

The ramification of the above is that transitional justice processes must take a broader perspective; in this way they might recognise other subjectivities that redefine women’s lives during and post-conflict, which may have socio-economic impacts. Such an understanding will support appropriate responses to women’s needs. Responding to women’s needs from a broader perspective will therefore require a human rights culture that supports respect for women’s rights

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<sup>121</sup> B. Byrne, ‘Gender, Conflict and Development’, vol. 1: Overview BRIDGE Report 34 (BRIDGE/Institute of Development Studies 1996).

<sup>122</sup> Vasuki Nesiah, ‘Engendering Transitional Justice’ in Sari Kuovo and Zoe Pearson (eds), *Feminist Perspectives on Contemporary International Law* (Hart Publishing 2011) 147.

<sup>123</sup> *ibid* 143.

<sup>124</sup> *ibid* 149.

<sup>125</sup> Patricia Daley, ‘Gender, displacement and social reproduction: Settling Burundi refugees in Western Tanzania’ (1991) 4:3 *Journal of Refugee Studies* 248-266.

and concerns in transitional justice processes. Reilly, in furthering feminist discourse on international law and transitional justice, advocates the potential use of international obligations to support women's human rights and gender integration in defining and developing a more holistic feature of gender justice.<sup>126</sup> Ultimately, she argues that achieving 'gender justice in transitions is inextricably tied to wider bottom-up efforts by women's movements to realize a comprehensive vision of women's human rights within a framework of critically-interpreted, universal, indivisible human rights.'<sup>127</sup> It is these arguments that this thesis seeks to build on in the assessment of the local contexts of Sierra Leone and Liberia.

The limitation of the existing literature, however, is in the failure to engage with how legal frameworks and institutions at the local level respond to these broader effects of armed conflict on women's human rights. Thus, this thesis contends that gender justice and transitional mechanisms must adopt a wider perspective so that institutions and laws respond to them, particularly at domestic levels where the international regime is expected to better find its expression. This thesis argues that violence will remain persistent if state transformational institutions fail to properly address what violence means in the context of armed conflict. As noted above, this thesis acknowledges the role that laws and institutions can play to support feminist ideas and women's integration. Thus it aims to critically examine post-conflict laws and institutions and how women's rights are addressed within these frameworks at the national levels. Most existing analyses focus on international laws and institutions without a national perspective; they often fail to consider how such laws can reaffirm women's post-conflict identities within local contexts, or how institutions can effectively support women's post-conflict

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<sup>126</sup> Niamh Reilly, 'Seeking Gender Justice in Post-Conflict Transitions: Towards a Transformative Women's Human Rights Approach' (2007) 3:2 *International Journal of Law in Context* 155–172.

<sup>127</sup> *ibid* 166.

interests. Even Coulter's recent analysis of Sierra Leone fails to address post-conflict institutions and laws.<sup>128</sup> This thesis intends to address the gaps. The recent book on Women Peace and Security by Olonisakin et al.<sup>129</sup> addresses the impact of peacekeeping missions in advancing gender equality at various levels. While this work is critical, this thesis broadly looks beyond the UN missions to assess the role the state plays to enthrone gender justice in its laws and institutions at the national level.

## **10. Field Work Methodology**

### *a. Qualitative Methods*

As this research is committed to feminist methodology, it places women victims of armed conflict at the centre of its analysis of post-conflict justice. Thus, based on the purpose of the research and its questions, an initial choice had to be made on what quantitative and qualitative methods and sources would best serve the research aim. While quantitative methods in research analyses can be useful to bring together common practices and can also show the magnitude of the effects of gender-based violence or armed conflict on women victims, they often do not reveal the real impact and meaning of these forms of violence or the effect of armed conflict. Quantitative methods also cannot uncover the underlying cultural or patriarchal causes that explain women's situation in conflict, or the form of resistance and complicity which women face during conflict and afterwards.

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<sup>128</sup> Chris Coulter, *Bush Wives and Girl Soldiers: Women's Lives through War and Peace in Sierra Leone* (Cornell University Press 2009).

<sup>129</sup> Funmi Olonisakin, Karen Barnes, and Eka Ipke, *Women, Peace and Security Translating Policy into Practice* (Routledge 2011).



According to Bentzon et al., ‘quantitative research methods are primarily intended to provide statistical data and analysis of broad numerical trends’.<sup>130</sup> Since this is not the aim of the research, a qualitative method is therefore much more relevant. Unlike quantitative methods, Bentzon et al. note that ‘qualitative research implies use of small samples and collection of data based on life histories, detailed accounts of specific life events, or in-depth interviews’.<sup>131</sup> One major method undertaken in this research is oral testimony. El Bushara points out that the significance of oral testimony in feminist research is that it brings out the personal experiences of the persons recounting the story, ‘personal memories and perceptions of reality, enabling them to identify what is important and true for them in their specific situation’.<sup>132</sup> This method gives the narrators the chance to address sensitive practical and social issues that may otherwise be difficult in other contexts.<sup>133</sup> Oral testimony can provide a voice to the excluded and be a catalyst for social change.

The choice of oral interviews and data collection in this research has provided opportunities to gain further insights into the extent to which post-conflict reconstruction efforts have supported gender justice for women in both countries. The interviews were also examined for themes relating to the effect of armed conflict on women and post-conflict responses, in order to assess the role of the law in the promotion of justice for women in post-conflict situations. The field research relied on a literature review to determine the major factors important to understanding the situation of women in armed conflict and the achievement of gender justice post-conflict. These led to the formulation of themes, which include: understanding the manifestations of

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<sup>130</sup> See Bentzon et al. (n 6) 153.

<sup>131</sup> *ibid* 152.

<sup>132</sup> Judy El Bushra, ‘Fused in Combat: Gender Relations and Armed Conflict’ (2003) 13:2/3 *Development in Practice* 252-265.

<sup>133</sup> *ibid* 253.

gender-based violence during protracted conflicts in Sierra Leone and Liberia; linking the root causes of violence to gender inequality and marginalisation; understanding the characteristics of vulnerable female actors in war (victims/survivors); understanding the existence and awareness of post-conflict policies and laws that can respond to the gendered impact of the war and the human rights violations women continue to face; and understanding what gender justice means for women victims and actors of war and how these responses have furthered the achievement of women's human rights and justice.

*b. Data Collection and Analytical Framework*

The field research data was generated through semi-structured interview guides, participant observation, focus group discussion, and a collection of secondary data, which include sources from (library work) journals, examination of legal documents, decided cases, and reviews of legal and policy documents. The secondary documents collected during the course of fieldwork are of immense value to the contents of the research.

All semi-structured interviews were done in person, while questionnaires were also generated and sent to a target audience and returned to the researcher. Out of 30 structured interview guides (questionnaires), each sent out to target groups in both countries with the exception of the 'victims/survivors', fourteen were returned. For the purpose of this research, two categories of people were targeted: women who were actors/victims/survivors (active participants), and the state and non-state actors engaged to support post-conflict reconstruction and interventions, including non-governmental organisations working with women, law enforcement agencies,

government agencies and policy makers, legal practitioners, professional associations, and social workers.

The choice of these two categories was based on the research question. The active participants described above supported the affirmation that wrongs or violations exist; established the impact of the wrongs on the lives of women; identified the forms of responses available to address the violations both during and after war; assessed the efficacy of these responses; and provided the perception of the survivors' desire for justice. The state and civil society actors identified and clarified the existence of legal and institutional responses; provided their perception of the efficacy of the responses; and assessed existing opportunities and challenges and how the framework can further support the promotion of women's human rights post-conflict.

*c. Characteristics of Target Audience*

1. The Active Participants; Victims/Survivors/Actors

The thesis acknowledges that the civilian populations of Liberia and Sierra Leone are victims of war either directly or indirectly. However, since this thesis targets women, it will categorise the two subgroups as active participants. The first comprises the female victims/survivors, and the second, female combatants who are actors and survivors/victims:

- (a) Female victims of sexual and other non-sexual gender-based violence are direct victims of war and the centre of the analysis.
- (b) The female combatants: the women who participated in the conflict as active rebel forces or were forcefully recruited during the war. Their testimony is important to

understand the role gender played in their participation in the war and their post-war experiences.

Since women's oppression is complex and involves many contradictions,<sup>134</sup> their oral experience is important in analysing their lived realities. As Mohanty notes, researching women's lives and histories requires 'reading against the grain'.<sup>135</sup> Thus, feminist analyses of women's situations acknowledge that the rewriting and remembering of history is the foundation of politicised consciousness and self-identity, which can determine the effect of the contestation of lived realities within a pre-existing patriarchal society.<sup>136</sup> Victims' testimonies are an empirical tool attesting to the efficacy or inefficacy of government responses to armed conflict and their commitment to the Women, Peace and Security agenda.

## 2. State and Civil Society Actors

These are people responsible for supporting post-conflict reconstructions. The following were targeted in the research:

- (a) Women's Rights-Based Organisations, Non-governmental Organisations and legal-based professional bodies: traditionally these groups support the promotion and protection of human rights and aim at providing information on their perception of gender roles in conflicts, their assessments of post-conflict reconstruction, and the implications for gender.

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<sup>134</sup> Sherry Gorelick, 'Contradictions of Feminist Methodology' (1991) 5.4 *Gender and Society* 459-477.

<sup>135</sup> Mohany Chandra Tampade, *Feminists Without Borders: Decolonizing Theory, Practice and Solidarity* (Duke University Press 2003) 42.

<sup>136</sup> *ibid* 42.

(b) Policy makers and government agencies: the research targets the institutions responsible for supporting the promotion and protection of human rights and post-conflict reconstruction, the National Human Rights Institution, the Truth and Reconciliation Commission, the Ministry of Gender and Women, the Ministry of Justice, the National Agency in charge of Women, Peace and Security (1325 unit), and the National Agency in charge of reparation and other law enforcement agencies.

*d. Duration and Location of Research*

The actual field study was spread across three visits between 2010 and 2012, including one visit each to Sierra Leone and Liberia. The first visit to Sierra Leone in April 2010 took over four weeks; likewise in Liberia in January 2012. There were prior communications through telephone and emails preceding the actual visits to arrange meetings prior to arrival. The researcher also used the contacts that she already had on ground in the two countries as a women's right advocate in the region.

In Sierra Leone, the data collection was done in three locations: the capital city, Freetown, Makeni, and Griffon. These places were selected because they were prominent locations during the wars. Makeni was further chosen because one of the contact groups<sup>137</sup> had worked with women affected by armed conflict in this community. In Liberia, the field research took place across two counties, Montserrado County (state capital) and Cape Mount County. Over 1.5 million out of 3.5 million Liberians live in Montserrado. The war took place in these two

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<sup>137</sup> Committee of Defence for Human Rights Sierra Leone.

locations; rebel groups operated in the state capital, where most killings were recorded, and the Cape Mount County was close to the Sierra Leone border, where killings and abductions also took place. The research took over two years because of the researcher's maternity break in June 2009 and other related personal challenges.

#### *e. Data gathering*

While the research work relied on the data collected through interviews in person and questionnaire analyses, it also drew on other data gathered in the field by human rights organisations'<sup>138</sup> alternative literatures. The reports contain direct testimonials by survivors on the impact of sexual violence, and the assessment of some post-conflict reconstruction processes to complement data collected in the field.

### **11. Limitations of the study**

The study is selective and limited in scope – it focuses largely on two major UN Security Resolutions dealing with Women, Peace and Security (1325 and 1820), while making tacit reference to the three new resolutions (1888,<sup>139</sup> 1889,<sup>140</sup> and 1960<sup>141</sup>). The reason for this approach is that these two resolutions represent the core principles of the WPS Agenda. Also, the two countries being studied have incorporated the two resolutions through the adoption of their National Action Plans and are supposedly progressively implementing these norms. This study,

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<sup>138</sup> Amnesty International, 'No one to turn to: women's lack of access to justice in rural Sierra Leone' (6 December 2002) AI Index: AFR 51/011/2005. Isis-WICCE, 'A situation analysis of the Women Survivors of the 1989-2003 armed conflict in Liberia' (2008) *Research Report* xiii.

<sup>139</sup> UN Security Council (22 November 2009) Res. S/1888/2009 (hereinafter referred to as UNSCR 1888).

<sup>140</sup> UN Security Council (5 October 2009) Res. S/1889/2009 (hereinafter referred to as UNSCR 1889).

<sup>141</sup> UN Security Council (16 December 2010) Res. S/1960/2010 (hereinafter referred to as UNSCR 1960).

however, is intended to serve as a foundation for further research on Women, Peace and Security in Africa.

The second challenge was the non-accessibility of some of the case law in the two countries post-conflict. The study would have benefited immensely from the analysis of post-conflict case laws on gender in local courts; however, the bureaucracy of government institutions further compounded the situation, preventing access.

The third challenge was encountered during the fieldwork. Some target groups were reluctant to grant interviews; for example, some of the female members of the rebel forces in Sierra Leone. There was also apathy and research fatigue; some interviewees claimed that several researchers had visited but nothing in particular had been achieved. However, the researcher's contacts on the ground, particularly Amnesty International, were able to convince the victims interviewed on the need to support the research as a way of contributing to academic work and better understanding of issues of gender and armed conflicts. The researcher also had to postpone the trip twice because of the potential instability in the research location during the elections period in Liberia in 2011.

## **12. Structure**

The thesis consists of seven chapters. Chapter One, the introduction, provides the background context of the thesis, the problem statement of the research, the theoretical framework upon which the thesis is built, and an exploration of existing literatures on gender and armed conflict and the contribution the thesis will make towards the relevant discourse. It also highlights

objectives and explores research methodology, field study, data analysis, findings, and study limitations.

Chapter Two is an overview of International Humanitarian Law and feminist perspectives. It also analyses recent developments in the international criminal justice system on sexual violence during armed conflict. It takes a critical look at existing case laws – their arguments, decisions, and effects on other jurisdictions – and also specifically looks at Sierra Leone’s Special Court and its contribution to legal development on gender crimes.

Chapter Three is an analysis of the performance of post-conflict arrangement in the two countries, focusing on the manifestation of three themes in post-conflict reconstructions: protection, prevention, and participation. It also looks at the challenges of aid support on development for women and for the guarantee of human rights and gender justice.

Chapter Four looks at Sierra Leone and Liberia and the situation of women post-conflict; it examines existing laws and policies and how effectively they can support gender justice and the promotion of women’s human rights.

Chapter Five examines the acts creating post-conflict transitional justice initiatives– the Truth and Reconciliation Commissions in the two countries– asking whether they can model the promotion of gender justice and meet the aim of providing the required protection for women post-conflict.



Chapter Six draws lessons from Sierra Leone and Liberia. Comparing the field testimonies with the Truth and Reconciliation Commission (TRC) report, it examines the TRC's recommendations and proposals for reparations, the implementation and the impact of the recommendations on the lives of women in their respective countries. It also provides women's perceptions of the form of post-conflict justice available to them, and whether the legal and institutional regime promoting Women, Peace and Security can support actual political and economic justice for women.

Chapter Seven, the conclusion, summarises the research findings and challenges, and offers proposals for future consideration.

## **Chapter Two: Gender and Armed Conflict: An Assessment of the Boundaries of International Humanitarian Law**

### **1. Introduction**

This chapter assesses the usefulness of International Humanitarian Law (IHL) in protecting women and girls during armed conflict. It reviews the legal regime covering the scope of armed conflict, and the IHL's response to the sexual violence that has plagued the world on an inconceivable scale in the last few decades, particularly in Rwanda, the former Yugoslavia, Sierra Leone, and Liberia. It assesses the growing recognition of the importance of prohibiting crimes of sexual violence, including rape, sexual slavery, forced marriage, and other gender crimes. The chapter also reviews how these developments, exemplified by the International Criminal Tribunal of Yugoslavia (ICTY)<sup>1</sup> and the International Criminal Tribunal Rwanda (ICTR),<sup>2</sup> have informed the establishment and influenced the inclusion of gender crimes in the Rome Statute of the International Criminal Court (ICC)<sup>3</sup> and the Special Court for Sierra Leone (SCSL).<sup>4</sup>

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<sup>1</sup> The Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) was appended to and adopted by UN Security Council Resolution 827, UN SCOR 48th sess., 3217th mtg. at 1-2 (1993); 32 ILM 1159 (1993).

<sup>2</sup> The Statute of the International Criminal Tribunal for Rwanda (ICTR) was appended to and adopted by the SC resolution 955, 49 UN SCOR (3453d mtg 15) UN Doc S/INF/50 Annex (1994), 33 ILM 1598 (1994).

<sup>3</sup> Rome Statute of the International Criminal Court (adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, 17 July 1998) A/CONF.183/9.

<sup>4</sup> Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (16 January 2002) S.C. Res. 246, U.N. SCOR, 57th Sess., U.N. Doc. S/2002/246, appended to Letter dated 6 March 2002 from the Secretary-General Addressed to the President of the Security Council, app. II (2002).

This chapter is divided into five sections. The first offers a brief overview of the Geneva Convention, and the second looks at International Humanitarian Law (IHL), which is intended to provide protection for victims of armed conflict, including women. A feminist analytical approach is adopted to assess the adequacy of the Convention and its Additional Protocols. The third section focuses on how rape and other sexual offences are treated in IHL, and gives an overview of case studies in the prosecution of gender crimes in the International Criminal Courts of Rwanda (ICTR) and Yugoslavia (ICTY). The fourth section comprises a short analysis of the Rome Statute of the ICC and the relevant gender sections, while the fifth section is an overview of the Special Court of Sierra Leone and the development in its jurisprudence on gender crimes.

The chapter ends by concluding that the international criminal justice system has a responsibility to ensure that gender-related crimes are appropriately addressed. Recent developments in the ICTR, ICTY, SLSC, and others concerning the prosecution of gender crimes committed during armed conflict point towards the willingness of the international community to support gender justice for women victims and survivors. However, a major challenge still remains: the Geneva Convention and its Additional Protocols<sup>5</sup> are limited in their ability to respond effectively to the gender-based consequences of armed conflict. Until a more integrated approach to redefine

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<sup>5</sup> First Geneva Convention '*for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*' (adopted 1864, last revision 1949); Second Geneva Convention '*for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*' (first adopted 1949, successor of the 1907 Hague Convention X); Third Geneva Convention '*relative to the Treatment of Prisoners of War*' (first adopted 1929, last revision 1949); Fourth Geneva Convention '*relative to the Protection of Civilian Persons in Time of War*' (first adopted 1949, based on parts of the 1907 Hague Convention IV). See also Protocol I (1977): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (as of 12 January 2007, it had been ratified by 167 countries). Protocol II (1977): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (as of 12 January 2007, it had been ratified by 163 countries). Protocol III (2005): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (as of June 2007, it had been ratified by seventeen countries and signed but not yet ratified by an additional 68 countries).

gender within the IHL is pursued, the full benefits of IHL may not be felt for women victims and survivors.

## **2. International Humanitarian Law (IHL): A Brief Overview**

Historically there have always been established rules regulating the conduct of hostilities.<sup>6</sup> For example, the Indian Code of Manu, dating to approximately 500 BC, was adopted because of people's respect for humanity; it was for the protection of combatants and civilians in both warring periods and times of peace.<sup>7</sup>

However, the international community did not formally address international war crime until 2000 years later, when the Nuremburg international war crime tribunal was established with the aim of prosecuting those responsible for the atrocities of the Second World War.<sup>8</sup> The London Charter was promulgated in 1945 and the International Military Tribunal was established with the focus to try crimes relating to peace and war, and crimes against humanity.<sup>9</sup> This tribunal, which sat at Nuremburg, laid a precedent by establishing the definitions of crimes against peace and humanity under international law.<sup>10</sup> In 1946, the United Nations adopted a resolution affirming the Nuremburg Trial Principles.<sup>11</sup> This included, firstly, the affirmation of personal

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<sup>6</sup> Kelly D. Askin, *War Crimes Against Women, Prosecution in International War Crimes Tribunal* (Kluwer Law International 1997) 5.

<sup>7</sup> Wilbourn E. Benton, 'Nuremburg: German Views of the War Trials 2', cited in Askin (n 6) 5.

<sup>8</sup> Askin (n 6) 6.

<sup>9</sup> Leslie C. Green, *The Contemporary Law of Armed Conflict* (3<sup>rd</sup> edn, Manchester University Press 2008) 50.

<sup>10</sup> As further explained by Leslie Green, the Tribunal equated crimes against humanity 'with war crimes as generally understood or as part of the conspiracy to wage aggressive war', and as such were deemed as crimes against peace. Green (n 9) 51.

<sup>11</sup> Principles of the Nuremburg Tribunal, 1950 No. 82 (Principles of International Law Recognized in the Charter of the Nuremburg Tribunal and in the Judgment of the Tribunal. Adopted by the International Law Commission of the United Nations) *Report of the International Law Commission Covering its Second Session, 5 June-29 July 1950* (1950) A/1316, 11-14.

liability under international law; and secondly, that state failure to hold the persons responsible for the crime or condemn the act would not excuse them from being personally liable for the acts defined. The third principle foreclosed a head of state from pleading his status to afford him immunity for crimes committed, while the fourth principle dealt with denial of the defence of superior orders and also the right to fair trial for alleged criminals. These principles became a guide for future development in international humanitarian law.

The term ‘International Humanitarian Law’ (IHL) is relatively new, representing a compendium of laws with the goal of protecting people who are not or are no longer taking part in hostilities. It regulates the means and methods of warfare, thus binding both states and armed groups in conflict situations. The International Committee of the Red Cross (ICRC) defines the humanitarian objectives of the IHL as the:

International Rules established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the rights of parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are or may be affected by the conflict.<sup>12</sup>

The adoption of the Geneva Convention in 1949 represented a significant step in the development of international humanitarian law. While the four Geneva Conventions adopted at that time cover international armed conflict, Article 3, which is common to all four conventions (“Common Article 3”), applies to armed conflicts that are not of international character but which occurred in the territory of one of the contracting parties. Common Article 3 also deals with armed conflict that takes place within the state and situations whereby hostilities exist

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<sup>12</sup> ICRC, *Commentary on the Additional Protocol of 8 June 1977 to the Geneva Convention of 12<sup>th</sup> August 1979* (Martinus Nijhoff Publishers 1987). See also J. Pictet et al. (eds) cited in Judith G. Gardam, *Conflict and International Humanitarian Law* (Kluwer Law International 2001) 3.

between government and rebel forces or vice versa. This article offers some minimum protection to people who are passive participants in armed conflict and also some members of the armed forces in certain situations.<sup>13</sup>

Further to this, Additional Protocol I, which was adopted in 1977, applies to international armed conflict, while Additional Protocol II applies to non-international armed conflict.<sup>14</sup> Since International Humanitarian law deals with armed conflict, it ceases to apply at the close of hostilities.<sup>15</sup> Article 51 of the Additional Protocol I to the Geneva Convention deals with the protection of civilian population, and as Gardam and Jarvis observe, this provision is relevant to women.<sup>16</sup> They point out that the IHL's objectives, as set out by the ICRC, are expected to support humanitarian problems arising from armed conflicts without any form of discrimination. However, despite records of innumerable women's rights' violations, IHL has failed to recognise the global inequalities experienced by women, and the different manifestations of discrimination against women that exist during armed conflicts.<sup>17</sup>

#### *a. Doing Gender in IHL*

Gardam and Jarvis question the labelling of the Geneva Convention as 'humanitarian law'; they argue it is a misnomer, since IHL is gendered in common with all other laws.<sup>18</sup> One of the purposes of International Humanitarian Law is to preserve humanity and protect people from the

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<sup>13</sup> M Gandhi, 'Notes and Comments: Common Article 3 of Geneva Conventions, 1949 in the Era of International Criminal Tribunals' (2001) *ISIL Year Book of International Humanitarian and Refugee Law* <<http://www.worldlii.org/int/journals/ISILYBIHRL/2001/11.html>> accessed 17 August 2012.

<sup>14</sup> (n 5) Additional Protocols.

<sup>15</sup> See art.6 of the Geneva Convention IV, particularly 6(3), describing the situation of prolonged armed occupation.

<sup>16</sup> See Gardam and Jarvis (n 12) 60, and the definition of Civilian in Article 51 of Protocol 1 to the Geneva Convention 1977.

<sup>17</sup> Gardam and Jarvis (n 12) 2.

<sup>18</sup> *ibid* 4.

ravages of war. In reality, this function has been overshadowed by the political contestation that exists in the realm of the world powers, making IHL subject to influence and negotiations. As a result, the strongest world powers dominate and direct what happens; such manoeuvring has been responsible for the exclusion of gender within the IHL.<sup>19</sup> The realm of power is male-dominated, and as such, women's voices are absent in its formulation. Thus, the issue of the imperviousness of international politics to the women's question becomes critical. Enloe asserts that the reason for the seeming exclusion of women in most legal instruments is because international relations are perceived as 'an inherently male activity'.<sup>20</sup>

In analysing the gendered nature of the laws of armed conflict, Charlesworth and Chinkin note that IHL is fraught with many inadequacies; this is especially so as it affects the protection of women and girls and because men have been more favoured than women. The result is that women are left to bear the brunt of armed conflict.<sup>21</sup> Cock has also argued that IHL has been negatively affected by gender stereotypes of men and women.<sup>22</sup> Gender stereotypes in international law reinforce the idea that women are a weaker, subservient sex. As such, these stereotypes reinforce, rather than fight against, the socially constructed unequal roles of women and men, which are aggravated in times of war; this only adds to the burden of war borne by women. Overall, Gardam and Jarvis are critical of International Humanitarian Law's limited focus, and contend that even the treatment of sexual violence is couched in terms relating to

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<sup>19</sup> Christopher Scott Maravilla, 'Rape as a War Crime: The Implications of the International Criminal Tribunal for the Former Yugoslavia's Decision in Prosecutor v. Kunarac, Kovac and Vukovic on International Humanitarian Law' (2000 – 2001) 13 FLA. J. INT'L L 321.

<sup>20</sup> C. Enloe, *Banana, Beaches and Bases: Making Feminist Sense of International Politics* (Pandora 1989) 3.

<sup>21</sup> Hillary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000) 250.

<sup>22</sup> J. Cock, 'Women and War in South Africa' (London Open Letters 1992) in Charlesworth and Chinkin (n 21) 252.

chastity and modesty.<sup>23</sup> Mackinnon also criticises the nature of IHL as reflecting ‘the separation of form from substance’;<sup>24</sup> that is, addressing the male issue of war as the real issue and women’s issues as trivial ones.

This is further emphasised by analysis of the four Geneva Conventions and the three Additional Protocols, which undoubtedly show that the Conventions as well as the Statute of the International Criminal Court in The Hague make tacit stereotypical references to women. For example, feminist analysis shows that of the over 43 specific provisions relating to women within the Geneva Convention and the 1977 Additional Protocols,<sup>25</sup> almost half of them deal with women and their roles as expectant or nursing mothers,<sup>26</sup> 19 provisions are actually designed to protect children,<sup>27</sup> and the rest are couched in language concerning honour and modesty.<sup>28</sup> Women are therefore construed as bearers of children, and not as individuals or women in their own right.<sup>29</sup>

The explanation for the obvious gender blindness in IHL is the assumption that before the First World War the number of women participating in armed conflict was insignificant; as a result of this, women’s issues were not properly captured in International Humanitarian Law. Askin and

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<sup>23</sup> Gardam and Jarvis (n 12) 108

<sup>24</sup> C. MacKinnon, *Towards a Feminist Theory of the State* (Harvard University Press 1989) 162. See also Ann Scales, ‘The Emergence of Feminist Jurisprudence: An Essay’ (1986) 95 *Yale LJ* 1373; Frances Olsen, ‘Feminism and Critical Legal Theory: An American Perspective’ (1990) 18 *Int J Soc L* 199.

<sup>25</sup> For further explanation on the Additional Protocol, see Gardam and Jarvis (n 12) 4.

<sup>26</sup> *ibid* 5. See also Helen Durham, ‘Women, armed conflict and international law’ (September 2002) 84: 847 *International Review of the Red Cross* 655.

<sup>27</sup> Judith Gardam and Hilary Charlesworth, ‘The Protection of Women in Armed Conflict,’ (2000) 22:1 *Human Rights Quarterly* 148-166.

<sup>28</sup> Gardam and Jarvis, (n 12) 11.

<sup>29</sup> *ibid* 513.



others have given the example of the Genocide Convention, adopted in 1948,<sup>30</sup> which forbids any acts committed in peace and war time targeted to destroy people on the grounds of race, ethnicity, religion, or nationality.<sup>31</sup> The categorisation, however, does not include gender.<sup>32</sup> Furthermore, as Askin observes, the Torture Convention,<sup>33</sup> though designed to check official abuse, was devised only to ‘protect men for the harms men commit against each other, not to those that are committed against women’.<sup>34</sup>

Women in IHL are portrayed as passive, the weaker sex, mothers, and non-combatants. Protagonists of IHL have answered feminist critiques with the argument that IHL strictly responds to people’s protection and survival and makes no claim to deal with society in general.<sup>35</sup> IHL strictly abstains from any attempt to ascertain the background of the conflict, be it based on discriminatory practices or not. This ‘limited mandate accounts for the successes in international humanitarian law (and there are many) and lies at the heart of this whole legal regime’.<sup>36</sup> Durham further notes that the aim of IHL is only to limit suffering during armed conflict, mainly saving the lives of civilians, and not to combat social inequalities. Durham argues that IHL focuses on addressing humanitarian needs in armed conflict based on the assumption that it responds to a population in which there is no systematic gender inequality.<sup>37</sup>

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<sup>30</sup> The Convention on the Prevention and Punishment of the Crime of Genocide, GA Resolution 2670 (9 December 1948) 78 UNTS 277. It was entered into force in 1951, two years after the Geneva Convention.

<sup>31</sup> See Article 2 of the Genocide Convention.

<sup>32</sup> See Askin (n 6) 225. See also N.N.R Quenivet, *Sexual Offences in Armed Conflict and International Law* (Transitional Publishers 2005) 154.

<sup>33</sup> Convention Against Torture and other Cruel, Inhuman or degrading Treatment or Punishment (10 December 1984) 23 ILM, 1072, as modified (1985) 24 ILM 535.

<sup>34</sup> Askin (n 6) 226; H. Charlesworth and C. Chinkin, ‘The Gender of Jus Cogens’ (1993) 15 *HRQ* 63; Alice Edwards, *Violence Against Women under International Human Rights Law* (Cambridge University Press 2011) 210.

<sup>35</sup> Durham (n 26) 656.

<sup>36</sup> *ibid* 656.

<sup>37</sup> *ibid* 657.

However, this approach fails to recognise the unequal situation of men and women in society generally. She writes:

[...] IHL does not attempt to place any regulations upon the basis of social structure before, or after, the conflict ... its limited aim leaves no room ... for deeper social analysis of inherent inequalities required by feminist legal theory.<sup>38</sup>

While this view portrays the general assumptions about IHL, feminist scholars continue to argue that the laws must be reordered to accommodate the experiences of women,<sup>39</sup> so that actual victims' experiences are apparent in the language of the law.<sup>40</sup> As Mackinnon observes, 'Behind all law is someone's story; someone whose blood, if you read closely, leaks through the lines. Text does not beget text, life does. The question ... is whose experience grounds the law'.<sup>41</sup> The realities of women do not fit into the concepts and categories of international law, which has made dealing with the structural disadvantages of sex and gender difficult.

### 3. Specific Areas of Gender Concern in IHL

#### *a. Non Discrimination and Equal Treatment under IHL*

The four Geneva Conventions and their 1977 Additional Protocols reiterate the principle of non-discrimination.<sup>42</sup> The Geneva Conventions guarantee that protection under the law should be provided 'without any adverse distinction founded on sex'. Article 14 of Geneva Convention III

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<sup>38</sup> Helen Durham, 'International Humanitarian Law and the Protection of Women' in Durham and Gurd (eds), *Listening to the Silences: Women and War* (Kluwer Law International 2005) 97.

<sup>39</sup> Karima Bennoune, 'Do we need new International law to protect women in armed conflict?' (2006) *IHL Case W Res. J* 5 364. See also Durham (n 38) 655; Theodor Meron, 'Rape as a Crime Under International Humanitarian Law' (1993) 87 *AM.J. INT'L L.* 424, 426.

<sup>40</sup> Rosalind Dixon, 'Rape as a Crime in International Humanitarian Law: Where to from Here?' (2002) 13:3 *EJIL* 697-719.

<sup>41</sup> See Catherine Mackinnon, 'Crimes of War, Crimes of Peace' (1993) 37 *UCLA Women Law Journal* 59 in Dixon (n 41) 699.

<sup>42</sup> Protections against discrimination can be found in Geneva Convention (GC) I art.12; GC II art.12; GC III art.14 and 16; GC IV art. 27; Additional Protocol I art.75(1); Additional Protocol II art.75(1) amongst others.

guarantees the rights of women who become prisoners of war, and reasserts equality for women without any form of discrimination, insisting that they should receive treatment ‘as favourable as that granted to men’. Article 16 also confirms this formal equality provision on the treatment of war prisoners: ‘...all prisoners of war shall be treated alike by the detaining Power’. ICRC documented general provisions that also reflect equality, including protections for human displacement, freedom of movement, and personal safety; provisions for health, food, water, sanitation, shelter, and essential items; family preservation; education; religious and cultural practices; and legal and judicial guarantees.<sup>43</sup> One of the major challenges to this form of approach in IHL arises where systems of formal equality are required to deliver substantive equal outcomes. Given the diverse circumstances of armed conflict and its impacts upon men and women, these outcomes might be difficult to achieve in reality.

The non-discriminatory clause in the conventions is a promise of formal equality based on the assumption of sameness without taking into consideration the uniqueness of individuals. As Lacey observes, such clauses assume ‘a world of autonomous individuals starting a race or making free choices which has no cutting edge against the fact that men and women are simply running different races’.<sup>44</sup> It is a promise of sameness in a world that is already constituted for men.<sup>45</sup>

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<sup>43</sup> For details of the relevant provisions, see ICRC, ‘Addressing the needs of women affected by armed conflict: An ICRC guidance document’ (ICRC 2004) 112-155.

<sup>44</sup> Nicola Lacey, ‘Legislation Against Sex Discrimination: Questions from a Feminist Perspective’ (1987) *JL and Soc.* 415, cited in Hillary Charlesworth ‘What are women’s International Human Rights’ (1987) in Rebecca J Cook, *Human Rights of Women: National and International Perspectives* (University of Pennsylvania 1994) 79. See also Charlesworth and Chinkin (n 21) 230.

<sup>45</sup> D. Poland, ‘Towards a Theory of law and Patriarchy’ in D. Kairys, *Freedom of Speech in Politics of Laws* (Pantheons Books 1982) 140-141.

*b. Protection of Women and Children under the Geneva Convention*

The Geneva Convention also specifically makes provisions to women in matters such as privacy and modesty, women's physiological specificity, pregnancy, and childbirth; they are also applicable to women deprived of their liberty. The GC provisions specifically target women, including cases of detained or interned pregnant women and maternity cases.<sup>46</sup> During hostilities, the parties to the conflict must endeavour to conclude agreements for the release, repatriation, and return to places of residence or to a neutral country of pregnant women and mothers with infants and small children;<sup>47</sup> detained or interned women must also be held separately from men and under the immediate supervision of women. The equality clauses are arguably of positive intention; however, a deeper analysis reveals gender deficiency. This view of equality rests on a particular understanding of what constitutes the role of women in society, and how they can be further protected to nurture children and avoid exploitation by other men if they are detained.

Additional Protocols I and II of the Fourth Geneva Convention also face gender scrutiny. These contain specific provisions relating to the protection of women and their children, particularly young children under the age of seven. This section allows for specific provisions for pregnant women and women with young children,<sup>48</sup> and also forbids anything that can hamper the enjoyment of such preferential treatment.<sup>49</sup> It allows expectant mothers and their children to benefit from the establishment of hospital and safety zones,<sup>50</sup> including adequate treatment for

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<sup>46</sup> See generally Athena Nguyen, 'The Influence of Gender Stereotyping on International Humanitarian Law' (2009) *Harvard International Law Journal* 16.

<sup>47</sup> GC IV, Articles 14, 23, 25, 38(5), 50, 89, 91 and 97 GC III, Articles 76, 85 and 124 .

<sup>48</sup> Article 75(5) AP I and Article 5(2) AP II, .Article 76(6) AP I and Article 132 Protocol (I), art. 8(a), 70(1), 76(2) and 76(3); Protocol (II), art.6(4).

<sup>49</sup> This protection against hindering preferential treatment concerns (relief actions for children and pregnant women (art. 70(1&2) AP1).

<sup>50</sup> art. 14.AP 1

serious cases,<sup>51</sup> and the protection of convoys transporting maternity cases.<sup>52</sup> Article 89 allows nursing mothers additional food and affirms that they should be prioritised during the distribution of relief packages.<sup>53</sup> Also, Article 23 provides that relief packages intended for pregnant women are to be granted free passage. Lastly, two provisions protect pregnant women and women with young children from the death penalty.<sup>54</sup>

As Carpenter observes, the impression given by this kind of protection is that women alone are critical to the survival and development of the child and this neglects the importance of fathering. Thus, ‘maternal imagery has often been used by protection organizations to invoke international sympathy for war-affected populations’.<sup>55</sup> The IHL, therefore, reflects the societal understanding of the sympathy directed towards women as the child’s only caregiver and indirectly neglects the need for general protection of the family as a humanitarian imperative.

*c. Women and the Concept of Honour in the Geneva Convention*

Article 27 of the Fourth Geneva Convention states that ‘Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault’. This is the first conventional reference to rape and other forms of sexual violence. It was updated in the 1977 treaties with Additional Protocol II, which states that the following acts against persons shall remain prohibited at any time and in any place whatsoever:

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<sup>51</sup> art. 10(2) AP1.

<sup>52</sup> art. 21 and 22 AP1

<sup>53</sup> art. 70 (1).AP1

<sup>54</sup> Protocol (I), art. 76(3); Protocol (II), art. 6(4).

<sup>55</sup> R. Charli Carpenter, “‘Women, Children and Other Vulnerable Groups’”: Gender, Strategic Frames and the Protection of Civilians as a Transnational Issue’ (2005) 49:2 *International Studies Quarterly* 306.

‘outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault’.<sup>56</sup>

An analysis of the general concept of women’s honour as described in Article 27 of the Fourth Geneva Convention shows that it is used in a way that presumes women’s honour is especially linked to her sexual behaviour. Reilly describes Article 27(2) as the ‘patriarchal mores’ of the Geneva Convention: it perceives women’s honour as a social more that can reduce her value from the perspective of men, but does not warrant prosecution like other war crimes.<sup>57</sup>

The thesis contends that women’s portrayal in IHL shows that, compared to men, the law overburdened women with moral responsibilities of care for the family, particularly children. The law also values women’s honour as something which must be maintained through chastity and modesty. It has been argued that the idea of men’s honour has been presented in IHL as that which deals with ‘both mind and bodily attributes,’ whereas women’s honour has been located mainly on ‘certain sexual attributes’ – those that men perceive as characteristic of women and see as important to them in that regard.<sup>58</sup>

The International Committee of the Red Cross’s (ICRC) commentaries on this article link respect of the family to women’s honour. The relevant commentary relating to this provision shows clearly the gender bias inherent in the clause, stating: ‘What special consideration? No doubt that

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<sup>56</sup> Art 4(2)(e).

<sup>57</sup> Niamh Reilly, *Women’s Human Rights: Seeking Gender Justice in a Globalizing Age* (Polity Press 2009) 101.

<sup>58</sup> Gardam and Charlesworth (n 27)159.

accorded in every civilized country to beings who are weaker than oneself and whose honour and modesty call for respect'.<sup>59</sup>

*d. Sexual Offences and the Geneva Convention*

Article 76(1) of Protocol I states: 'Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.'

Article 4(2)(e) of Protocol II prohibits '[o]utrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.' Thus, the Conventions expressly include rape and forced prostitution, although they erroneously link rape with crimes of honour or dignity instead of with crimes of violence. Such a demarcation grossly mis-characterises the offense, perpetuates detrimental stereotypes, and conceals the sexual and violent nature of the crime.<sup>60</sup>

In reviewing the four Geneva Conventions, the shortcoming of the IHL becomes more apparent, particularly on why rape has not been viewed as a serious international crime. Firstly, from the above, it is apparent that the language of the Geneva Convention has been loose and continues to present destructive stereotypes by treating rape as a crime against honour. This description of rape as a violation of 'honour' and 'family rights' fails to take into consideration the gravity of the offence and projects the raped woman as someone that is of low character and disgraced. Secondly, rape is attached to the wrong category of rights in the Geneva Conventions; rather than being defined under Article 32 expressing violations of physical integrity, rape is included in

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<sup>59</sup> Commentary on the Fourth Geneva Convention, art. 27 (ICRC 1958) 205-206.

<sup>60</sup> Kelly Askin, 'Prosecuting Wartime Rape And Other Gender-Related Crimes Under International Law: Extraordinary Advances, Enduring Obstacles' (2003) *Berkeley Journal of International Law* 289.

Article 27 – a provision viewed as offering protection for ‘family rights’ and not the physical integrity of the person. Finally, Article 147 lists the following crimes as grave breaches:

[Wilful killing, torture or inhumane treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power . . . taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.<sup>61</sup>

While it can be argued that rape and sexual assault are included in the terms of Article 147 and thus constitute a grave breach, the fact that they were not specifically mentioned shows that rape and sexual assault are not seen as critical and serious.

From the above, it is apparent that Geneva Conventions and the 1977 Additional Protocols contain a number of shortcomings and contradictions with respect to defining sexual violence as a serious international offence. This is an unfortunate situation; as Askin notes, ‘the failure to recognize this violent nature of rape and other sexual offences is one reason that it has been assigned a secondary status in international humanitarian law’.<sup>62</sup> Additionally, the language also inadvertently presents rape as a crime that can only be committed against women, therefore excluding men. Thus Additional Protocol II ‘grossly mischaracterizes the offense, perpetuates detrimental stereotypes, and conceals the sexual and violent nature of the crime’.<sup>63</sup> A gendered approach to the Geneva Convention must look beyond women’s traditional roles, deconstruct patriarchal norms, and avoid seeing women as a homogeneous category. In its current state, IHL ignores gender inequalities and reinforces, rather than fights against, the socially constructed, unequal roles of women and men, which are aggravated in times of war.

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<sup>61</sup> Geneva Convention IV, art. 147.

<sup>62</sup> Askin (n 60) 289.

<sup>63</sup> *ibid* 298.



#### 4. Paradigm Shift: IHL on Rape and other Sexual Offences in the 1990s

Until the 1990s, sexual violence in war was largely invisible. However, following the conflicts in the Balkans and Rwanda in 1994, the Security Council established two *ad hoc* Tribunals – the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) – in 1993 and 1994, respectively. These were an important development<sup>64</sup> in the processes of engendering the criminal justice system at the international level, as they attempted to acknowledge that gender difference affects justice and law. Copelon, in assessing this impact, states that the ‘ad hoc International Criminal Tribunals have brought gender into mainstream international jurisprudence’.<sup>65</sup>

The Statutes of the Yugoslavia and Rwanda Tribunals authorise the *ad hoc* Tribunals to prosecute war crimes, crimes against humanity, and genocide committed during the war. Whereas genocide is defined identically in the two Statutes, and mirrors the definition contained in the Genocide Convention, the war crimes and crimes against humanity provisions differ. The differences largely reflect the different nature of the armed conflict in the two territories, the principal crimes committed, and the interests of the UN Security Council in establishing the two tribunals.<sup>66</sup> Although the statutes relating to the context of Rwanda and the former Yugoslavia are undoubtedly imperfect, they have had far reaching impacts, particularly in the treatment of

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<sup>64</sup> David S. Mitchell, ‘Rape as a Weapon of Peace’ (2003) 15 *Duke J. of Comp. and Int'l L* 239-240.

<sup>65</sup> Rhonda Copelon, ‘Gender Crimes As War Crimes: Integrating Crimes Against Women Into International Criminal Law’ (2000) *McGill Law Journal* 1.

<sup>66</sup> Catherine N. Niarchos, *Women, War, and Rape: Challenges Facing The International Tribunal for the Former Yugoslavia* (1995) 17 *HUM. RTS. Q.* 649 (noting the rape of civilian women in the former Yugoslavia and other armed conflicts throughout history, the gender-biased status of rape in international humanitarian law, and the challenges of prosecuting rape before the International Tribunal for the Former Yugoslavia).

‘rape as a specific tool of warfare rather than a by-product of war or as a crime of troop discipline’; furthermore, they are ‘quickly becoming normative instruments of the law of war’.<sup>67</sup>

The successes of the *ad hoc* tribunals include: expanding the definitions of crimes against humanity and genocide to include rape; the participation of women in high-level positions and the inclusion of staff sensitive to gender issues; effectively prosecuting various forms of sexual violence as instruments of genocide, war crimes, crimes against humanity, means of torture, forms of persecution, and enslavement; and generally defining, clarifying, and redressing gender-related crimes.<sup>68</sup> Despite the shortcomings of the Geneva Convention, the statutes of the tribunals essentially confirm existing principles of international criminal law, and its additional protocol represents remarkable progress in recognising rape as a crime in humanitarian law.

Rape is explicitly listed as a crime against humanity in Article 5 of the ICTY Statute and Article 3 of the ICTR Statute. As such, it may be prosecuted separately as a crime against humanity committed as part of a widespread or systematic attack, or alternatively, rape may be prosecuted as a crime against humanity as a constituent offence under the torture, enslavement, inhumane acts, or persecution provisions. With these statutes, crimes committed exclusively or disproportionately against women and girls have secured ground-breaking redress in the Yugoslav and Rwanda Tribunals. The *ad hoc* Tribunals and the International Criminal Court (ICC) reflect the international community’s willingness to combat and redress crimes of sexual violence as a specific means of warfare, and there is now a strong indication that such crimes

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<sup>67</sup> Yoram Dinstein and Mala Tabory, *War Crimes in International Law* (Martinus Nijhoff 1996) 221.

<sup>68</sup> Kelly Askin, ‘The Jurisprudence of International War Crimes Tribunals: Securing Gender Justice for some survivors’ in Durham and Gurd (n 38) 125-153.

constitute *jus cogens*.<sup>69</sup> A review of case law in the prosecution of gender related crimes in ICTY and ICTR is presented below, showing the development that occurred post-1990s.

a. Prosecutor v. Akayesu<sup>70</sup>

Akayesu was a bourgmestre and a powerful figure in the Taba commune, where he served between April 1993 and June 1994. His duty was the maintenance of public order within his commune, subject to the authority of the prefect; he had exclusive control over the communal police, as well as any gendarmes in Taba. During this period, about 2,000 Tutsis were killed in Taba, and more were displaced. Most of the displaced women faced different forms of sexual violence and rape, usually committed by more than one assailant. These acts of sexual violence were generally accompanied by explicit threats of death or bodily harm. The displaced female civilians lived in constant fear, and their physical and psychological health deteriorated as a result of the sexual violence, beatings, and killings. Akayesu knew that the acts of sexual violence, beatings, and murders were being committed, and was at times present when they happened. By virtue of his presence during this sexual violence, beatings, and murders, and by failing to prevent these acts, the Accused was found to have encouraged these activities. Under Article 6(3) of the statute, an individual is criminally responsible as a superior for acts of a subordinate if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so, and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. Thus, he was found guilty of committing Crimes Against Humanity in violation of Article 3 common to the Geneva Conventions, rape

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<sup>69</sup> Askin (n 6) 49 (noting that '[I]nternational treaties, documents, and UN resolutions serve as an indication of the direction international law is heading regarding fundamental norms of international law. The greatly increased activity in international law in the 1990s towards affording greater protection, status, and equality to women evidences a universal trend toward *jus cogens* status for gender based abuses, particularly violence').

<sup>70</sup> *Prosecutor v. Jean-Paul Akayesu* (Judgment) ICTR-96-4-T ICTR (2 September 1998).

punishable by Article 3(g) of the Statute of the Tribunal, other inhuman acts punishable by Article 3(i) of the Statute of the Tribunal, and Article 4(e) (outrages upon personal dignity, in particular rape, degrading and humiliating treatment and indecent assault) of the Statute of the Tribunal.

The *Akayesu* case was the first case to qualify rape and other forms of sexual violence as instruments of genocide forming part of a widespread and systematic attack directed against civilians. The Trial Chamber also articulated the seminal definitions of rape and sexual violence under international law, and recognised forced nudity as a form of sexual violence constituting inhumane acts as crimes against humanity.

The Trial judge defined rape as ‘a physical invasion of a sexual nature, committed on a person under circumstances which are coercive’.<sup>71</sup> The judgments expanded the definition of rape beyond the domestic jurisdiction emphasis on the non-consensual sexual intercourse definition.<sup>72</sup> The definition of rape varies from jurisdiction to jurisdiction; in some instances, it is defined as sexual intercourse or sexual penetration without the victim’s consent. However, the *Akayesu* Judgment situates rape more broadly, as including acts that involve the ‘insertion of objects and or the use of bodily orifices not considered to be intrinsically sexual’.<sup>73</sup> Through this elaboration, the judgment expanded the traditional definition of rape and also compared rape with torture,<sup>74</sup>

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<sup>71</sup> *ibid* [688].

<sup>72</sup> Kelly Askin, ‘Gender Crimes in the ICTR: Positive Development’ (2005) 3 *Journal of International Criminal Justice* 1007-1018. See also ‘The European Court’s Judgment in *MC v Bulgaria*’ (2005) 3 *J. of International* 447–62.

<sup>73</sup> *Akayesu* (n 70) [598].

<sup>74</sup> *ibid* [686].

moving from the definition of rape as ‘a mechanical term’ to one that covers the range and nature of the crime.<sup>75</sup>

Sexual violence, which is broader than rape, is defined as ‘any act of a sexual nature which is committed on a person under circumstances which are coercive.’ Sexual violence is not limited to physical invasion of the human body and may include acts that do not involve penetration or even physical contact.<sup>76</sup>

In the *Akayesu* Judgment, forced nudity was also cited as an example of sexual violence not involving touching. Further, the Trial Chamber emphasised that the amount of coercion required does not need to amount to physical force, as ‘[t]hreats, intimidation, extortion and other forms of duress which prey on fear or desperation may constitute coercion.’<sup>77</sup> Notably, the Chamber stressed that coercion may be inherent in armed conflict situations or when military personnel, such as militia, are present.<sup>78</sup> The definition of sexual violence expanded on the national jurisdiction definition and further held that ‘[s]exual violence was a step in the process of destruction of the Tutsi group – destruction of the spirit, of the will to live, and of life itself.’

The Trial Chamber convicted Akayesu of nine of the fifteen counts charged against him in the Amended Indictment. He was found guilty of genocide and the crimes against humanity of extermination, murder, torture, rape, and other inhumane acts. For these crimes, the Trial Chamber sentenced him to life imprisonment. The ICTR Appeals Chamber Judgment rendered

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<sup>75</sup> See *Askin* (n 60) 1011.

<sup>76</sup> See *Akayesu* (n 70) 688.

<sup>77</sup> See *Askin* (n 72) 319.

<sup>78</sup> *ibid* 319.

on 1 June 2001 upheld the Trial Chamber judgment. It is also worth noting that when the prosecutor initially submitted the indictment against Jean-Paul Akayesu, there were no charges for gender-related crimes, despite the fact that women's and human rights organisations had documented extensive evidence of rape and other forms of sexual violence throughout Rwanda. However, witness testimonies – at the invitation of one of the female trial judges, Navi Pillay<sup>79</sup> – revealed vast evidence of sexual violence committed in Taba by Hutu men against Tutsi women. The former Chief Prosecutor of the ICTY and ICTR, Richard Goldstone, in affirming the influence of women in the *ad hoc* tribunals, admits there was a 'gender bias' within the system. He also notes the lack of senior female investigators, and that the culture of the male investigators 'was not such as to make them concerned about gender related crime'.<sup>80</sup> Goldstone further describes how the female judge in the Akayesu trial elicited information from the Accused on gender-based violence, which led to the Tribunal requesting that the Prosecution amend the indictments to include crimes of sexual violence.<sup>81</sup> Thus, the indictment was amended during the trial in June 1997. The prosecution amended the indictment to charge Akayesu with rape and 'other inhumane acts' as crimes against humanity and war crimes in Counts 13-15 of the amended indictment.<sup>82</sup>

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<sup>79</sup> Women Caucus for Gender Justice in the International Criminal Court, *Recommendation and Commentary for the March 1998 prep com Part II (Procedure 1998) Prep Com (4 and 16)*.

<sup>80</sup> Richard J. Goldstone, 'Prosecuting Rape as a War Crime' (2002) 34 *CASE W. RES. J. INT'L L* 277, 279, cited in Diane Lupig, 'Investigation and Prosecution of Sexual and Gender-Based Crimes before the International Criminal Court' (2009) 17:2 *American University Journal of Gender, Social Policy and the Law* 431-496.

<sup>81</sup> *ibid* 436.

<sup>82</sup> *The Prosecutor v. Jean-Paul Akayesu* (Appeal Judgment) ICTR-96-4-A ICTR (1 June 2001) <<http://www.unhcr.org/refworld/docid/4084f42f4.html>> accessed 21 September 2012.

b. *Prosecutor v Zejnil Delalić et al.*<sup>83</sup> (*Celebici Judgment*)

The Celebici indictment occurred in 1992 at Celebici prison camp in a detention facility in central Bosnia and Herzegovina. It involved four persons: Esad Landžo, Hazim Delić, Zejnil Delalić, and Zdravko Mucić. The Trial Chamber found Hazim Delić and Esad Landžo, in their respective positions as Deputy Commander and Guard at the Čelebići prison camp, personally guilty for their direct participation in the crimes committed against detainees. Evidence in the case shows that the conduct of the Accused created an atmosphere of fear and intimidation in the prison-camp, which was caused by the indiscriminate abuse meted out to the inmates; some suffered violence which led to rape, sexual violence, murder, and other forms of physical injury and psychological pain. The Trial Chamber also found that inmates were denied access to food, water, medical care, and sleeping and toilet facilities.

Specifically, the prosecution charged Delić with torture under Article 2 of the Statute as a grave breach of the 1949 Geneva Conventions, and under Article 3 of the Statute as a violation of the laws or customs of war, for the *actus reus* of forcible sexual penetration. He was also charged in the alternative with cruel treatment. Delalić, Mucić and Delić were charged with superior responsibility for ‘wilfully causing great suffering or serious injury to body or health’ as a grave breach, and with cruel treatment as a violation of the laws or customs of war for acts committed by their subordinates, which included subjecting two male detainees to having a burning fuse cord placed around their genitals.<sup>84</sup>

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<sup>83</sup>*Prosecutor v. Zejnil Delalić et al.* (“Čelebići”) (Judgment) IT-96-21-T (16 November 1998).

<sup>84</sup> *ibid* [14-24].

This case established a notable precedent relating gender with superior responsibility, and expanded on the law of torture to apply when victims are tortured by means of rape. Zdravko Mucić, the commander of the camp, was found guilty for crimes committed by his subordinates by virtue of his position. In relation to sexual violence, the court held the respondent was responsible for failure to supervise subordinates against sexual misconduct knowing fully that large number of women were in the prison and were guarded by men of the opposing camp. The standard used in the judgment follows that actual knowledge from subordinates may not be necessary – that it can be inferred from circumstances.

*c. Prosecutor v Anto Furundzija*<sup>85</sup>

Anto Furundzija was the local commander of the Jokers at the time of the commission of the crime, at the Jokers Headquarters in Nadioci. He was accused of being present at the scene where another soldier interrogated Witness A, beat and forced her to have oral and vaginal sexual intercourse with him, and did nothing to stop or curtail these actions.

In the *Furundzija* Judgment, the Trial Chamber held that the rape of a single victim is a serious violation of International Humanitarian Law; this case involved multiple rapes committed against one woman during the conflict. The Court also held that both the humiliation accompanying sexual violence and forcing somebody to witness the rape of another person amounted to torture.<sup>86</sup>

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<sup>85</sup> See *Prosecutor v. Furundzija* (Indictment, Amended-Redacted) IT-95-17/1-PT (2 June 1998), in which Counts 1-11 and 15-25 against additional Accused are redacted. Furundzija was charged under Article 3 of the ICTY Statute with Count 13, Violation of the Laws or Customs of War (torture), and Count 14, Violation of the Laws or Customs of War (outrages upon personal dignity). Count 12 was withdrawn. Torture and outrages upon personal dignity are prohibited by Common Article 3 to the 1949 Geneva Conventions, and thus fall under Article 3 of the Statute.

<sup>86</sup> *ibid* [267(ii)].



d. *Prosecutor v Dragoljub Kunarac et al.*<sup>87</sup>

Another landmark case was the *Kunarac et al.* Judgment, in which the court developed the law on sexual slavery. Each Accused was charged with and convicted of various forms of gender-related crimes, including rape, torture, enslavement, and outrages upon personal dignity. In this case, the tribunal convicted one of the Accused of rape and enslavement as crimes against humanity for conduct constituting sexual slavery, when victims were held in facilities and repeatedly raped over a period of days, weeks, or months. This judgment rendered a conviction of rape as a crime against humanity in the Yugoslav Tribunal for the first time and the first ever conviction for enslavement in conjunction with rape. It made extensive holdings regarding indicia of enslavement and the Tribunal found that this can include sub-elements of control and ownership; the restriction or control of an individual's autonomy, freedom of choice, or freedom of movement; the accruing of some gain to the perpetrator; absence of consent or free will; exploitation; the exaction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship; and sex, prostitution, trafficking in persons, assertion of exclusivity, subjection to cruel treatment and abuse, and control of sexuality.<sup>88</sup> As noted by Slatery, an important contribution of this case to the international jurisprudence on gender-based violence was the clarification of the legal standard for the elements of sexual violence crimes.<sup>89</sup> The Trial Chamber advanced its judgment beyond *Furundzija's* case and based its judgment on whether the victim gives consent voluntarily and with free will given the circumstances.

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<sup>87</sup> *Prosecutor v. Kunarac* (Judgment) IT-96-23-T and IT-96-23/1-T (22 February 2001).

<sup>88</sup> *ibid* [541].

<sup>89</sup> Elizabeth Barad and Elisa Slatery, 'Gender Based Violence Laws in Sub-Saharan Africa'; Report prepared for the Committee on African Affairs of the New York City Bar (2007) p 12.

e. *Prosecutor v Nyiramasuhuko et al*<sup>90</sup>

At the commission of the crime of genocide, amongst others, Pauline Nyiramasuhuko was the Minister of Family and Women's Development in the Interim Government of Rwanda. Following the death of the Rwandan President Habyarimana and the subsequent assassination of Prime Minister Uwilingiyimana, the interim Hutu government planned to exterminate the Tutsi and issued directives in this regard. Nyiramasuhuko participated in the plan, supervising and ordering attacks whilst also encouraging and assisting atrocities committed by the *Interahamwe* militia, of which her son Shalom Ntahobali was in the leadership.

She was charged, with her son and four others, with conspiracy to commit genocide, crimes against humanity of extermination, murder, persecution, and other inhumane acts, and violence to life as a war crime. The Prosecution also specifically charged Nyiramasuhuko and Ntahobali with rape as a crime against humanity, and with outrages upon personal dignity as a war crime. Evidence showed that during these attacks, Nyiramasuhuko ordered *Interahamwe* to rape Tutsi women, and Ntahobali aided and abetted the rapes. Nyiramasuhuko was, for the most part, charged with both direct and superior responsibility.

The Trial Chamber thus convicted her on the indictment of conspiracy to commit genocide, for entering into an agreement with members of the Interim Government on or after 9 April 1994 to kill Tutsis in Butare prefecture, and genocide for ordering the killing of Tutsis taking refuge at the Butare prefecture office. She was also found guilty of rape as a crime against humanity as a superior of the *Interahamwe*, and also for violence to life as a war crime.

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<sup>90</sup>*Prosecutor v Nyiramasuhuko et al.*, (Amended Indictment) (1 March 2001).

Nyiramasuhuko's case is significant: she was the first woman to be indicted by the International Criminal Tribunal for Rwanda (ICTR) and the first to be indicted for genocide and rape as a crime against humanity.

The ICTY and ICTR no doubt represent an advancement in the prosecution of gender-related war crimes. They have diminished the emphasis on consent in rape by holding that any form of captivity could mean an absence of consent, and creatively adopted evidentiary rules to minimise the requirement of corroboration. This has expanded the meaning and definition of rape.

## **5. The Rome Statute of the International Criminal Court**

The Rome Statute of the International Criminal Court was the first international treaty to recognise a wide range of violent sexual crimes as some of the most serious international offences. The statute is an affirmation of the post ICTY/ICTR readiness of the international community to combat egregious gender violence as a result of war.

Crimes Against Humanity are defined in Article 7(1)(g) of the Rome Statute as including '...rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.' Article 8 confirms that this and other forms of sexual violence constitute grave breaches of the Geneva Conventions. Specifically, the additional language 'also constituting a grave breach of the Geneva Conventions' and 'also constituting a serious violation of Article 3 common to all four Geneva Conventions' is used in relation to gender crimes.

As shown above, the ICC had for the first time codified rape as a grave breach of the Convention. The recognition of rape as a grave breach amounts to special *opinion juris* because it signifies the gravity of the offence and triggers an unremitting obligation for states to prosecute.<sup>91</sup> Affirming the development, Weller<sup>92</sup> opines that the Rome Statutes express the legal views of the international community on the definition of crimes against humanity and war crimes – including sexual slavery and other forms of sexual violence. The statute builds on the definition of rape in the ICTY and ICTR, providing for victims’ reparation and also creating a victims’ trust fund.

However, the definition of “gender” as adopted in the Rome Statutes has been criticised. It reads: ‘For the purposes of this Statute, it is understood that the term ‘gender’ refers to the two sexes, male and female within the context of society. The term ‘gender’ does *not* indicate any meaning different from the above’.<sup>93</sup> Scholars argue about the effect of this definition on the likely gender dimensions that might arise in the course of the ICC’s work. Charlesworth argues that the adoption of the definition is a deliberate attempt by the international community to create confusion by not portraying gender as a social construction of the roles of males and female;<sup>94</sup> Charlesworth and Chinkin also hold that the definition lacks transformative potential.<sup>95</sup>

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<sup>91</sup> Cate Steains, ‘Gender Issues’ in Roy S. Lee (ed), *The International Criminal Court: The Making Of The Rome Statute: Issues, Negotiations, Results* (Kluwer Law International 1999) 362-63 (364: ‘While there were precedents for the inclusion of rape as a crime against humanity, the Statute’s recognition of a range of sexual violence crimes, in addition to rape, under crimes against humanity creates an important new precedent’).

<sup>92</sup> Marc Weller, ‘Undoing the Global Constitution: UN Security Council Action on the International Criminal Court’ (2002) 78*INT’L AFFAIRS* 693-699 (‘Certain types of conduct are deemed so harmful to all mankind that any state can exercise jurisdiction in relation to them’).

<sup>93</sup> Rome Statute, art.7(3). My emphasis.

<sup>94</sup> See Hilary Charlesworth, ‘Feminist Methods in International Law’ (1999) 93*AM. J. INT’L L.* 379-394.

<sup>95</sup> Charlesworth and Chinkin, (n 22) 35.

While agreeing with the above, Oosterveld however notes that the interpretation of gender in the ICC is likely to take into consideration other existing laws to interpret gender, which will contain various principles, including ‘gender mainstreaming’ as it has been adopted by the UN.<sup>96</sup> Gender is one of the most controversial terminologies in the quest for respect for women’s rights – most UN policy documents, as Charlesworth points out, conflate gender with sex, and this has been one of the challenges of implementing gender mainstreaming at the UN. A more inclusive definition will support gender justice in the ICC, unlike the ambiguity the current definition has created.<sup>97</sup>

Another issue of concern in the ICC is the definition of forced pregnancy in the Rome Statute, which qualifies as both a crime against humanity and a war crime. Article 7(2)(f) states that ‘Forced pregnancy means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law’.<sup>98</sup> In the first leg of this law, unlawful confinement is a key element.

It has been argued that the first legal requirement in the offence of forced impregnation is not the fact that the woman is raped or pregnant, but that she was confined in a place at a period within which she was pregnant.<sup>99</sup> The second leg added another dimension: the ICC statute also places

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<sup>96</sup> Valerie Oosterveld, ‘The Definition of “Gender” in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?’ (2005) 18 *Harv. Hum Rts. J.* 55-85.

<sup>97</sup> Hillary Charlesworth, ‘Not Waving but Drowning: Gender Mainstreaming and Human Rights in the United Nations’ (2005) 18 *Harv. Hum Rts. J.* 1–18.

<sup>98</sup> Finalised Draft Text of the Elements of Crimes, Preparatory Comm’n for the Int’l Crim. Ct., (2000) UN Doc. PCNICC/2001/1/Add.1, art. 7(i)(g)(4) and art. 8(2)(b)(xxii)-4<[http://www.un.org/law/icc/statute/rules/english/1\\_add1e.pdf](http://www.un.org/law/icc/statute/rules/english/1_add1e.pdf)> accessed 2 July 2011.

<sup>99</sup> Kristen Boon, ‘Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent’ (2001) 32 *COLUM. HUM. RTS. L. REV.* 660.

limitations on the ‘identity of the perpetrator and victims –they must be members or thought to be members of different ethnic groups’.<sup>100</sup> That is, the person forcefully impregnated must be deprived of her ability to move freely within the period she was made pregnant, and the perpetrator must not be from her ethnic group. This definition is context-specific; while it could fit into the situation in Rwanda or Bosnia, it might not fit into all situations, like that of Sierra Leone.

Askin argues that the clause concerning the intent of affecting the composition of any population ‘is limiting, and that the latter alternative of the definition is more general and capable of affecting more women’.<sup>101</sup> For example, in Sierra Leone, forced impregnation did not target ethnic composition, and thus the first element in the definition would not be applicable.

## **6. The Special Court in Sierra Leone**

In August 2000, the Security Council adopted a Resolution requesting the ‘Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special Court consistent with this resolution.’<sup>102</sup> The Resolution ‘reiterate[s] that the situation in Sierra Leone continues to constitute a threat to international peace and security in the region.’<sup>103</sup>

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<sup>100</sup> *ibid* 663. See also Milan Markovic, ‘Forced Pregnancy and the ICC’ (Bepress Legal Series Paper 2006).

<sup>101</sup> Kelly D Askin, ‘The Jurisprudence of International War Crimes Tribunal’ in Durham and Gurd (n 39)144.

<sup>102</sup> Security Council Resolution 1315 (14 August 2000).

<sup>103</sup> *ibid*.

Like most countries coming out of conflict, the Sierra Leone Government, through the Lomé Peace Accord, opted for an ‘unconditional amnesty’.<sup>104</sup> However the preamble of the resolution referenced the initial reservation made by the UN Secretary General Representative on the Lomé Peace Agreement: that the UN will not support amnesty for ‘international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law’.<sup>105</sup>

The mandate of the Special Court required it ‘to focus on those who played leadership roles’.<sup>106</sup> Cecily argues that the *ad hoc* tribunals have a much broader power to ‘prosecute persons responsible for serious violations of international humanitarian law’.<sup>107</sup> The court focuses not only on international law, but as a hybrid court also incorporates the Sierra Leone laws.

The main feature of the SLSC is provided for under Article 1, which states that:

The Special Court shall, except as provided in subparagraph (2), have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

The limitation of the court to investigating and trying only those who bear the greatest responsibility was criticised as an attempt by the UN Security Council to deliberately reduce the

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<sup>104</sup> Williams A. Schabas, *The UN International Criminal Tribunal: The Former Yugoslavia, Rwanda and Sierra Leone* (Cambridge University Press 2006) 36; Abdul Tejan-Cole, ‘Notes From the Field: The Complementarity and Conflicting Relationship Between Special Court for Sierra Leone and the Truth and Reconciliation Commission’ (2003) 6 *Yale Human Rights and Development L.J* 140-159.

<sup>105</sup> *ibid* 39.

<sup>106</sup> International Center for Transitional Justice, *The Special Court for Sierra Leone: Under Scrutiny* (March 2006) 12.

<sup>107</sup> Cecily Rose, ‘Troubled Indictments at the Special Court for Sierra Leone: The Pleading of Joint Criminal Enterprise and Sex-Based Crimes’ (August 2008) <[http://works.bepress.com/cecily\\_rose/1](http://works.bepress.com/cecily_rose/1)> accessed 20 July 2011.

amount of money spent on the prosecution, and fear that the sitting in Sierra Leone might re-ignite the war.<sup>108</sup>

The Special Court also has jurisdiction over crimes against humanity,<sup>109</sup> i.e. serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II. The Special Court Statute reads:

The Special Court shall have the power to prosecute persons who committed the following serious violations of international humanitarian law:

- a. Intentionally directing attacks against the civilian population as such or against individual Civilians not taking direct part in hostilities;
- b. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- c. Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.<sup>110</sup>

Notably, the Special Court is the first of its kind to charge and try individuals for the recruitment of child soldiers as a violation of International Humanitarian Law as well as ‘forced marriage’ as a crime against humanity.

A number of important limits and qualifications to the court’s jurisdiction have been identified, including the fact that the Special Court has to take into consideration the domestic jurisdiction

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<sup>108</sup> Tom Perriello and Marieke Wierda, ‘Special Court Under Scrutiny’ (Prosecution Case Studies Series, International Center for Transitional Justice 2006) 6.

<sup>109</sup> Special Court Statute, Article 2 of the statutes of the SLSC.

<sup>110</sup> Special Court Statute, Article 3 of the SLSC.



because it has concurrent but primary jurisdiction.<sup>111</sup> Second, while the court has jurisdiction to prosecute the nationals of any state, it is limited to the crimes committed in the territory of Sierra Leone. Third, prosecutions are restricted to acts committed ‘since 30 November 1996’.<sup>112</sup>

## 7. Special Court of Sierra Leone and Gender Crimes

The Statute of the Special Court, under Article 2, gives the court the power to prosecute persons who committed crimes as part of a widespread or systematic attack against any civilian population as crimes against humanity. This form of violation includes murder;<sup>113</sup> extermination;<sup>114</sup> enslavement;<sup>115</sup> deportation;<sup>116</sup> imprisonment; torture;<sup>117</sup> rape; sexual slavery; enforced prostitution; forced pregnancy and any other form of sexual violence;<sup>118</sup> persecution on political, racial, ethnic, or religious grounds;<sup>119</sup> and other inhumane acts.<sup>120</sup> The ICC Statute, through its Articles 7 and 8, entitles the court to prosecute war crime and crimes against humanity, including ‘any other sexual violence of comparable gravity’ in the list. Article 2 above, meanwhile, does not emphasise that the sexual violence need be of comparable gravity.

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<sup>111</sup> See Article 8 of the Special Court Statutes

<sup>112</sup> *ibid* Article 1.

<sup>113</sup> Statute of the Special Court, art.2(a).

<sup>114</sup> *ibid* art.2(b).

<sup>115</sup> *ibid* art.2 (c).

<sup>116</sup> *ibid* art.2(d).

<sup>117</sup> *ibid* art.2(e-f).

<sup>118</sup> *ibid* art.2(g).

<sup>119</sup> *ibid* art.2(h).

<sup>120</sup> *ibid* art.2(i).

Article 3 deals with violations common to the Geneva Convention and Additional Protocol 11, while Article 4 focuses on other serious violations of International Humanitarian Law. Article 5 crucially deals with crimes punishable under Sierra Leonean Law, including the abuse of girls.<sup>121</sup>

The SCSL has contributed immensely to the development of international gender jurisprudence of the criminal tribunals, beyond that of the ICTY and the ICTR. This includes recognition of gender crimes in its definition of crimes against humanity, expanding the interpretation to include forced marriage, re-defining sexual slavery, and arranging for health care facilities for women suffering from medical conditions like fistula as a result of sexual assault to enable them to attend court sessions to testify.<sup>122</sup> Moreover, the SCSL had 20% of its investigative team focused on sexual offences; this is higher than that of the ICTR, which was less than 3%. This is positive and unique, given the enormous violations of women's sexual rights in the Sierra Leone war.<sup>123</sup> This section will review in detail the cases in SCSL relating to gender crimes, particularly as they relate to forced marriage and sexual slavery. It focuses on three cases that were originally brought against thirteen men but later consolidated into three cases known as the Armed Forces Ruling Council (AFRC Case), the Revolutionary United Council (RUF), and the Civil Defence Force (CDF).<sup>124</sup> While the AFRC and the RUF cases had issues relating to sexual violence included in the indictments, the CDF did not.<sup>125</sup>

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<sup>121</sup> *ibid* art.5 (a-b). see also The Prevention of Cruelty to Children Act 1926 (Cap 31)

<sup>122</sup> Helen Scanlon and Kelli Muddell, 'Gender and transitional justice in Africa: Progress and prospects' (2009) 9:2 *African Journal on Conflict Resolution* 9–28.

<sup>123</sup> *ibid* 9-28.

<sup>124</sup> *Prosecutor vs. Fofana and Kondewa*(Judgment) SCSL-04-14J (2 August 2007). Moinina Fofana and Allieu Kondewa were three leaders of the former Civil Defence Forces (CDF). Both leaders of the CDF were convicted by the Special Court on four counts of violations of Common Article 3 of the Geneva Conventions (in respect to murder, cruel treatment, pillage, and collective punishments), while Kondewa was additionally convicted of conscription of children under the age of fifteen years and making them take part in armed hostilities

<sup>125</sup> Teresa Doherty, 'Developments in the Prosecution of Gender-Based Crimes—The Special Court for Sierra Leone Experience'(2008)17 *Am. U.J. Gender Soc. Pol'y and L.* 327.

a) *Prosecutor v Brima, Kamara and Kanu (AFRC Case)*<sup>126</sup>

The three defendants Alex Tamba Brima, Ibrahim Bazy Kamara and Santigie Borbor Kanu were indicted on fourteen counts charge including war crimes and crimes against humanity. At the time of the commission of the offences, they were senior commanders of the Armed Forces Ruling Council (AFRC); Brima was the overall commander, with Kamara as the deputy and Kanu as the Chief of Staff.

All three were found guilty by the Trial Chambers as criminally responsible for the systematic attack on the civilian population, and were convicted on six counts of violations of Article 3 of the Geneva Convention and Protocol 11, four counts of crimes against humanity pursuant to Articles 2(a), 2(b), 2(c) and 2(g) of the Statute, and four single counts of other serious violations of International Humanitarian Law pursuant to Article 4(c) of the Statute.

However, there was no conviction entered by the Trial Chamber on Count 7 related to sexual slavery or any other sexual violence, on the grounds that the majority of the Trial Chamber held that the charge violated the rule against duplication and as such was dismissed. Likewise, Count 8, relating to forced marriage, was dismissed as not being different from sexual slavery. The Accused appealed against this judgment, but the Appellate Court upheld the sentence, holding that sexual slavery and forced labour took place.

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<sup>126</sup> *Prosecutor v Brima, Kamara and Kanu*(Judgment) SCSL-2004-16-T (20 June 2007).

b) *Prosecutor v Sesay, Kallon and Gbao (RUF Case)*<sup>127</sup>

Foday Saybana Sankoh, Sam Bockarie, Issa Hassan Sesay, Morris Kallon, and Augustine Gbao were former leaders of the former Revolutionary United Front (RUF), and were indicted between March and April 2003. Due to the death of Sankoh and Bockarie, the Prosecutor dropped the indictment against both of them on 8 December 2003.<sup>128</sup>

Specifically, the prosecutor indicted the three RUF members with eight counts of crimes against humanity under Article 2 (including charging the defendants with extermination, rape, sexual slavery, murder, and other inhumane acts including forced marriage), eight counts of war crimes under Article 3 (including acts of collective punishment, terrorism, violence to life, health and physical or mental pillage, outrages upon personal dignity, murder and hostage taking), and two counts of other serious violations of the law and custom of war under Article 4 (conscripting and enlistment of child soldiers).

The convictions of the RUF led to the first conviction in an international tribunal for crimes against humanity of sexual slavery and forced marriage. The Trial Chamber found that at different times the Accused, through the Armed Forces Ruling Council/RUF forces, committed numerous crimes, including the murder of civilians, rape, sexual slavery, forced marriages, and looting and burning of property. The Chamber also found that the accused participated and significantly contributed in a joint criminal enterprise.

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<sup>127</sup> *Prosecutor v Sesay, Kallon and Gbao* (Judgment) SCSL-04-15-T (25 February 2009).

<sup>128</sup> The trial took four years spanning from 5 July 2004 and closing arguments were heard on the 5 of August 2008.

## Sexual Slavery

In the two cases above, testimonies of public rapes and other forms of sexual violence perpetrated by the militias were given by witnesses, explaining how they were abducted and conscripted by militias to become 'bush wives'. Sexual slavery is exclusively listed under the ICC statutes and it follows the slavery definition in the Slavery Convention. The ICTY Kunarac trial also followed the Convention, emphasising the elements of control and ownership, as well as situations whereby the victim's consent or free will is absent.<sup>129</sup>

Sexual slavery has been a tool of war from time immemorial, and modern international law has responded to this scourge. The 1926 Slavery Convention<sup>130</sup> defines slavery as follows:

### Article 1:

For the purpose of the present Convention, the following definitions are agreed upon:

(1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

(2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.<sup>131</sup>

The convention also places obligations on state parties to take adequate steps to prevent and suppress slave trade and bring about the complete abolition of slavery in its entirety, progressively and as soon as possible.<sup>132</sup>

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<sup>129</sup> *Kunarac* (n 88) 539.

<sup>130</sup> The Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926 (25 September 1926) 46 Stat. 2183, 60 L.N.T.S. 253.

<sup>131</sup> The Slavery Convention, art. 1

<sup>132</sup> *ibid* art. 2.

Sellers notes that the 1926 Slavery Convention is largely regarded as an instrument whose object and purpose is to abolish chattel slavery. She argues that the Convention ‘has reinforced the international community’s abolition of eighteenth- and nineteenth-century slave practices’, positing that, ‘when fully grasped, the 1926 Slavery Convention’s view of enslavement proscribes sexual slavery as well as any other actions whereby a master could exercise powers attaching to the right of ownership over a person’. She argues that the Convention did not define slavery by gender; it abolished sexual ‘slavery and sexual ownership of males and females’, and as such ‘female slaves and their experiences must be considered as fully protected under the 1926 Slavery Convention’.<sup>133</sup> Sellers notes further that oftentimes the terms ‘slavery’ and ‘enslavement’ are used interchangeably, except when enslavement refers to a crime against humanity or when slavery refers to a violation of the laws and customs of war under a specified statute.<sup>134</sup> She also argues that although the ICTY Statute set out enslavement as a crime against humanity, it did not also explicitly proscribe or enumerate the crime of sexual slavery. In contrast, the Statute of the SCSL enumerated charges of enslavement and sexual slavery under Article 2, defining crimes against humanity. She asserts that the presence of the specific crime of sexual slavery in the SCSL Statute has been applauded as a legal advancement, much like the inclusion of sexual assault crimes in the Rome Statute of the ICC. However:

The SCSL erected a new and different set of legal challenges when it employed the Article 2(g) sexual slavery charge in the RUF case. In the AFRC case, the dismissal of the count charging sexual slavery and sexual violence, as well as the Trial Chamber’s discretionary decision to eliminate sexual violence evidence from the count of other inhumane acts, stunted the legal redress available to modern female slaves. Article 3 of the SCSL Statute incorporates prohibitions

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<sup>133</sup> Patricia Viseur Sellers, ‘War time female Slavery: Enslavement?’ (2011) 44 *CORNELL INT’L L. J.* 115-143; see also Helen Duffy, ‘Hadijatou Mani Koroua v Niger: Slavery Unveiled by the ECOWAS Court’ (2008) 9 *Human Rights Law Review* 151.

<sup>134</sup> Sellers (n 134); see also Yuki Tankara, ‘Japan Comfort Women: Sexual Slavery and Prostitution During World War II and the US Occupation’ (2002) *WAR* 6-7.

against war crimes common to the Geneva Conventions of 1949 as well as provisions of the Additional Protocol II to the Geneva Conventions.<sup>135</sup>

She argues further that given the enormity of female abduction during war, the drafting oversight in Article 3 of the SCSL statute, ‘which effectively removed the war crime complement to the crime against humanity of enslavement and sexual slavery ... suggests incomplete access to justice for the female slave.’<sup>136</sup>

Sellers, however, opines that despite these interventions, there are still apparent shortcomings in the judgments, noting specifically that ‘inconsistencies and a lack of parallelism permeate to different degrees in the cases,’ and that the ICTY and the SCSL hold different explanations of slavery crimes.

In 1992, nearly 50 years after the Second World War, the Japanese Government apologised to the ‘comfort women’<sup>137</sup> who were taken into sexual slavery. The UN Special Rapporteur described the stories of these women as ‘most horrendous’:

[...] multiple rape on an everyday basis in the ‘military comfort houses’...Allegedly, soldiers were encouraged by their commanding officers to use the “comfort women” facilities rather than civilian brothels ‘for the purpose of stabilizing soldiers’ psychology, encouraging their spirit and protecting them from venereal infections’, as well as a measure to prevent looting and widespread raping during military attacks on villages.<sup>138</sup>

A UN report also clearly shows how women and girls in Rwanda were bought, forced into sexual slavery, and became the wives of their captors. The *Interahamwe* also bought and sold women

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<sup>135</sup> Sellers (n 134) 136

<sup>136</sup> *ibid* 137.

<sup>137</sup> Christine M. Chinkin, ‘Women’s International Tribunal on Japanese Military Sexual Slavery’ (April 2001) 95:2 *The American Journal of International Law* 335-341.

<sup>138</sup> United Nations, Preparatory Document on the Question of Systematic Rape, Sexual Slavery and Slavery-like Practices During Wartime (7 September 1993) E/CN.4/Sub.2/1993/447.

amongst themselves.<sup>139</sup> Sellers argues that the SCSL imputed a new and different set of legal challenges by bringing the Article 2(g) sexual slavery charge in the RUF Case. The judgement in the RUF case further redefined the definition of sexual slavery and as such moved away from the confusion generated in the AFRC case, which was later clarified on appeal as noted above.

### **Forced Marriage**

The SCSL judgments<sup>140</sup> show that the AFRC and RUF forces were guilty of the offence of forced marriages. It is important to note however that forced marriage is not mentioned in the categories of offences recognised under the SCSL Act. The charge proffered on forced marriage was brought under the prosecution of crimes against humanity under the category of ‘other inhumane acts’.<sup>141</sup>

The court undoubtedly received testimonies showing that systematic abduction of women and girls took place and that some of them were forced to perform regular sexual intercourse, forced domestic labour, undergo forced pregnancies, and to rear children. They were also forced to live, without their consent, with ‘husbands’ who were combatants, who also provided shelter and other marital needs and safeguarded them from other men who could be potential abusers.<sup>142</sup> As noted by Hon Justice Doherty, both domestic and international treaties view marriage as requiring mutual consent, which is lacking in forced marriage; in this regard, the fact that forced marriage may not involve elements of physical violence, and that women accepted their position

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<sup>139</sup> United Nations Preliminary Report Submitted by the Special Rapporteur on violence against women, its causes and consequences (1994) E/CN.4/1995/42, 1994 [288] and [290].

<sup>140</sup> *Prosecutor v Brima, Kamara and Kanu* (Appeals Judgment) SCSL-2004016-A (22 February 2008)[193]. See the RUF judgment, *ibid* [128].

<sup>141</sup> Statute of the Special Court, art.2(h).

<sup>142</sup> *Brima* (n 140) [190].



to live with the husbands during armed conflict, does not legitimise said marriage.<sup>143</sup> She further argues that women's labelling as wives in that circumstance is traumatic, and the stigma that follows can hamper their self-determination and reintegration into society.<sup>144</sup>

In analysing the judgment of the Trial Chamber in AFRC case, Oosterveld<sup>145</sup> argues that the failure of the majority of the trial judges to understand that forced marriage is a type of gender-based crime with sexual and non-sexual aspects – with the majority holding that ‘the evidence of forced marriage is subsumed by crimes against humanity of sexual slavery’, and as such dismissing forced marriage charges as redundant – shows their lack of capacity of understanding gender crimes.<sup>146</sup>

*c. Prosecutor v Charles Taylor*<sup>147</sup>

Charles Taylor, former leader of the NPFL (National Patriotic Front of Liberia) and later President of Liberia, was alleged to have in that capacity assisted, encouraged, directed, and/or controlled the aforementioned warring factions in conducting armed attacks in the territory of Sierra Leone from 30 November 1996 to 18 January 2002 (the Indictment period), with members of the RUF (Revolutionary United Front), AFRC (Armed Forces Revolutionary Council), AFRC/RUF Junta or alliance and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters). The attacks perpetrated included terrorising the civilian population

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<sup>143</sup> Doherty (n 126) 330

<sup>144</sup> *ibid* 329

<sup>145</sup> Valerie Oosterveld, ‘Lessons from the Special Court of Sierra Leone on the Prosecution of Gender Based Crimes’ (2009) 17:2 *Journal of Gender Social Policy and the Law* 407.

<sup>146</sup> *ibid* 414, citing *Brima* (n 140) where J. Sebutinde maintained that use of wife shows ownership rather than establishing marital relationship.

<sup>147</sup> *Prosecutor v Charles Taylor* (Trial Chamber Judgement) SCSL-03-1-T (18 May 2012).

by burning civilian homes, murder, sexual violence, physical violence, illegal recruitment of child soldiers, abduction, forced labour, and looting.

The accused was thus charged and convicted on eleven counts under the indictment; five of the counts related to crimes against humanity punishable under Article 2 of the Statute, specifically murder, rape, sexual slavery, other inhumane acts, and enslavement. The Accused was charged with five additional counts comprising violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 of the Statute, in particular: acts of terrorism; violence to life, health and physical or mental well-being of persons, in particular murder, cruel treatment and pillage; and outrages upon personal dignity. The remaining counts charged the Accused with conscripting or enlisting children under the age of fifteen years into armed forces or groups, or using them to participate actively in hostilities, a serious violation of international humanitarian law punishable under Article 4 of the Statute. Evidence shows that the Accused also provided financial support, military training, technical, medical, and other operational support to the RUF, and provided arms and ammunition, military personnel, operational support, moral support, and on-going guidance to the RUF, AFRC, AFRC/RUF Junta or alliance, and Liberian fighters for military operations during the Indictment period.

The Charles Taylor judgment further affirmed the willingness of the International Community to hold violators accountable for crimes against humanity and war crimes irrespective of their position or office. The judgment created a precedent whereby for the first time an international court convicted a former head of state as responsible for various forms of sexual violence, including rape and sexual slavery.

Askin<sup>148</sup> notes that the verdict of the Trial Chamber shows that ‘the trial judges recognized that rape, sexual slavery, and other forms of sexual violence were used as a strategic weapon of warfare, intended to harm not only the direct victims, but their families and whole communities’.

Another development is that although Taylor was not physically present in most of the places where the atrocities were committed, the fact that he encouraged and participated in their planning made him responsible for the commission of sex crimes. The Trial Chamber was convinced that the Accused knew of the AFRC/RUF’s operational strategy and intent to commit crimes from the clear and consistent information he received after his election.<sup>149</sup>

The Trial Chamber judgment also demonstrated a clearer understanding of gender crimes when it held that:

[...] It is permissible to enter multiple convictions for the crime charged under Count 5 (sexual slavery) and the crime charged under Count 4 (rape). While both are forms of sexual violence, each offence contains a distinct element not required by the other. The offence of rape requires non-consensual sexual penetration. The definition of rape does not require that the perpetrator exercise ongoing control or ownership over the victim, as is required by the crime of sexual slavery. The Trial Chamber further notes that the requisite sexual act in the definition of sexual slavery can be committed by multiple means, and does not necessarily entail non-consensual sexual penetration. The Trial Chamber therefore finds that rape (Count 4) and sexual slavery (Count 5) contain materially distinct elements, and that it is legally permissible to enter convictions on both counts.<sup>150</sup>

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<sup>148</sup> Kelly Askin, ‘Charles Taylor Judgment: A Victory for Gender Justice’ (Open Society Foundation, April 26 2012) <<http://www.charlestaylortrial.org/2012/04/26/charles-taylor-judgment-a-victory-for-gender-justice/>> accessed 19 August 2012.

<sup>149</sup> *Taylor*(n 147) [6886].

<sup>150</sup> *ibid* [6989].

Oosterveld further notes that the judgment ‘shed more lights on lesser-known gender-based violations’.<sup>151</sup> For example, there were testimonies of women being forced to undress publicly and being raped in the presence of people they knew – husbands, neighbours, and children. Furthermore, several witnesses gave accounts of how objects like wood were inserted into their vaginas after the act of rape or gang rape.<sup>152</sup> In considering these violations, the Trial Chamber found that these actions resulted in further humiliation and degradation of the victims, thus aggravating the crime of outrages upon personal dignity.<sup>153</sup>

The Trial Chamber also found that rape was widespread, and that it represented a systematic attack deployed by the RUF and/or AFRC forces against the civilian population of Sierra Leone. It therefore held that the rape of women in Sierra Leone constitutes a crime against humanity under Article 2 of the Statute, stating further that rape was an ‘intrinsic element of the “reign of terror” unleashed by the AFRC and RUF...and that rape was a standard practice of the rebels’.<sup>154</sup>

Moreover, the Trial Chamber found evidence that women were deprived of their liberty and forced by the rebels to engage in sexual acts, labour, and that the abductor also exercised power of ownership over them. It therefore held that sexual slavery is a crime against humanity under Article 2 of the Statute.<sup>155</sup> In this case the Trial Chamber defined ‘the *actus reus* of the offence of sexual slavery to comprise two elements, first, that the Accused exercised any or all of the powers attaching to the right of ownership of a person or persons (the slavery element) and second, that the enslavement involved sexual acts (the sexual element) while the *mens rea* for the violation consists in

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<sup>151</sup> Valerie Oosterveld ‘Gender Justice and the Charles Taylor Judgment’ (12 May 2012) CIC, Canada International Council.<[www.opencanada.org/features/the-think-tank/gender-justice-and-the-charles-taylor-judgement/](http://www.opencanada.org/features/the-think-tank/gender-justice-and-the-charles-taylor-judgement/)> accessed 19 August 2012.

<sup>152</sup> Taylor’s Judgment, Para. 1196.

<sup>153</sup> *ibid*

<sup>154</sup> *Ibid* [973].

<sup>155</sup> *Ibid* [1043]

the intentional exercise of any or all of the powers attaching to the right of ownership, over the victim'.<sup>156</sup>

The Trial Chamber also found that both rape and sexual slavery constitute 'war crimes under Outrages upon Personal Dignity' under Article 3 of the Statute,<sup>157</sup> as acts of terrorism, they are also serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (Count 1).<sup>158</sup> It further held that 'such sexual violence was therefore deliberately aimed at destroying the traditional family nucleus, thus undermining the cultural values and relationships which held society together'.<sup>159</sup>

In Charles Taylor's case, unlike the AFRC case and the RUF case, "forced marriage" was not charged in the Indictment. However the Trial Chamber found that the evidence adduced by the Prosecution under the charges related to Sexual Violence included extensive testimony by women and girls regarding forced conjugal association to which they were subjected. In the absence of the charge of "forced marriage", the Trial Chamber considered this evidence with regard to the charges in the Indictment, as well as the past jurisprudence of the SCSL with regard to this issue. The Trial Chamber noted there had been procedural challenges in defining the elements that constitute forced marriage in previous trials in SCSL, and there were suggestions by the judges to divide elements constituting the crime of forced marriage into separate counts. Thus the Trial Chamber viewed the term "forced marriage" as a misnomer terminology for describing "forced conjugal association"

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<sup>156</sup> *ibid*[419]

<sup>157</sup> *ibid*[1204]

<sup>158</sup> *ibid*[2048]

<sup>159</sup> *ibid*[2034]

imposed on women and girls in the circumstances of armed conflict, which involved both sexual slavery and forced labour in the form of domestic work such as cooking and cleaning.<sup>160</sup>

The Trial Chamber did not consider the nomenclature of “marriage” to be helpful in describing what happened to the victims of this forced conjugal association, and found it inappropriate to refer to their perpetrators as “husbands”,<sup>161</sup> thus rejecting the terminology of “Forced Marriage”. The Trial Chamber held that what happened to the girls and women abducted in Sierra Leone and forced into this conjugal association ‘was not marriage in the universally understood sense of a consensual and sacrosanct union, and should rather, in the Trial Chamber’s view, be considered a conjugal form of enslavement’.<sup>162</sup>

While the redefinition of forced marriage is significant, failure to include it in the indictment is a deficiency – it is unfortunate that the opportunity presented by the Charles Taylor case to redefine the offence of forced marriage was missed, with the Trial Chamber leaving it open for future interrogation. The failure to address forced marriage in Charles Taylor’s case denied justice to thousands of women who suffered this form of violation.

Charles Taylor, however, was held personally responsible for the atrocities, because he had knowledge of the operational strategy of the AFRC/RUF and the atrocities they were committing during the conflict in Sierra Leone, but did nothing to stop them.<sup>163</sup> He thus aided and abetted the crime and was criminally responsible for his actions.

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<sup>160</sup> *ibid*[ 422-425]

<sup>161</sup> *ibid*[ 426]

<sup>162</sup> *ibid* [427]

<sup>163</sup> *ibid.* [6886.]

Unlike Sierra Leone, Liberia is yet to prosecute those who committed grievous atrocities against people, despite the outcry from activists and the TRC's recommendations in this regard. This form of impunity will not support any equitable transitional justice. Despite the convictions in the Special Court of Sierra Leone, people are still not yet satisfied with the level of justice achieved; the investment was enormous for a poor country like Sierra Leone, and people yearn for such investment to support reparation and rehabilitation programmes to rebuild the lives of other people who have become permanent victims of war.<sup>164</sup>

## **8. Conclusion**

Despite the developments represented by the decisions in the International Criminal Tribunal of the former Yugoslavia (ICTY), International Criminal Tribunal of Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL), this chapter contends that International Humanitarian Law (IHL) still remains largely gender neutral and stereotypes women. The chapter further affirms that international law privileges men, victimises women and continues to promote sexual hierarchies, which trivialise women's experiences.

While the inclusion of gender crimes in the International Criminal Court (ICC) and the Sierra Leone Special Court Statutes is indicative of a willingness to recognise and prosecute gender and sex crimes, the assessment of the SCSL Statutes reveals their limitation. Their failure to recognise some of the most important instances of women's private suffering (i.e. forced marriages) as gender and sex crimes further affirms feminist criticisms of persisting boundaries

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<sup>164</sup> Mary Cornville, 'Convictions Fail to Provide Justice for War Survivors', Catholic Agency for Overseas Development (2009) <<http://www.csford.org.uk/news/convict/2009-02-27>> accessed 12 August 2012.

in the IHL. The thesis contends that failure to provide a comprehensive categorisation of the heinous crimes against women left women's suffering to the discretion of court judges, who lack the capacity to draw out the complexities of gender-based violations. This limitation is exemplified by the failure of the courts, particularly in the AFRC case and later in the Charles Taylor case, where the court missed an opportunity to contribute positively to the jurisprudence on forced marriages as a gender crime.

This omission regrettably left a significant number of women who suffered this violation without any form of recourse. It speaks volumes of the inadequacy of the criminal justice system to deliver gender justice to women.

The next chapter will look at how soft laws and institutions have supported justice for women in Sierra Leone and Liberia through a comprehensive assessment of UN Security Council Resolutions 1325 and 1820.



## Chapter Three: Implementing Women, Peace and Security: An Assessment of National and Regional Institutions

### 1. Introduction

The United Nations Security Council adopted Resolution 1325<sup>1</sup> in October 2000, followed by four other peace and security resolutions (1820,<sup>2</sup> 1888,<sup>3</sup> 1889,<sup>4</sup> and 1960<sup>5</sup>), as the legal framework to guide gender, peace building, and post-conflict reconstruction processes globally. In furtherance of this goal, in 2002 the Secretary General of the UN enjoined State Parties to adopt National Action Plans (NAPs)<sup>6</sup> to support the implementation of UNSCR 1325 in regional and national peace building agendas. Presently the NAPs are incorporated in 37 countries, which include Sierra Leone and Liberia.<sup>7</sup> The integration of the National Action Plans in these two West African countries is significant given the enormous damage they suffered as a result of protracted conflict.

The UNSCR 1325 endorsed two separate policies: gender balance and gender mainstreaming.<sup>8</sup> The twin concepts are interwoven and complementary.<sup>9</sup> Given this, the chapter will examine the

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<sup>1</sup> UN Security Council (31 October 2000) Res. S/Res/1325/2000 (hereinafter referred to as UNSCR 1325).

<sup>2</sup> UN Security Council (19 June 2008) Res. S/1820/2008 (hereinafter referred to as UNSCR 1820).

<sup>3</sup> UN Security Council (22 November 2009) Res. S/1888/2009 (hereinafter referred to as UNSCR 1888).

<sup>4</sup> UN Security Council (5 October 2009) Res. S/1889/2009 (hereinafter referred to as UNSCR 1889).

<sup>5</sup> UN Security Council (16 December 2010) Res. S/1960/2010 (hereinafter referred to as UNSCR 1960).

<sup>6</sup> Security Council, 'Statement by the President of the Security Council at the 4641st meeting of the Security Council' (held on 31 October 2002) S/PRST/2002/32.

<sup>7</sup> Peace Women, 'List of National Action Plans- National Implementation' <<http://www.peacewomen.org/naps/list-of-naps>> accessed 10 August 2011.

<sup>8</sup> Christine Chinkin and Hilary Charlesworth, 'Building Women into Peace: The International Legal Framework' (2006) 27:5 *Third World Quarterly* 939.

<sup>9</sup> Maureen Shaw, 'Moving beyond Rhetoric: Assessing the Impact of Resolution 1325' (2010) *Rethinking Human Rights* 8 <[www.peacewomen.org](http://www.peacewomen.org)> accessed 10 July 2011.

extent of implementation of the Women, Peace and Security (WPS) agenda from three perspectives. The first will give a brief historical background to the adoption of the resolutions and the concept of gender mainstreaming and gender balance in the UN. The second part will examine the applicability of the concept in Sierra Leone and Liberia, assessing the peace processes, disarmament programmes, and the other initiatives. The third will assess gender equality initiatives of the African Union and how they have impacted on the WPS agenda.

This chapter generally examines how these separate policies have been able to deliver adequate representation and gender justice post-conflict. Furthermore, in 2001, the African Union, through its Constitutive Act,<sup>10</sup> adopted gender equality as a key operational objective. Given the volatility of conflict in Africa, post-conflict reconstruction has been central to the AU.<sup>11</sup> This chapter assesses the extent of AU support for women.

This chapter contends that developments after the adoption of UNSCR 1325 may have increased women's visibility and opportunities, particularly at the UN level. However, its impact on addressing women's representation and gender equality at the domestic level still remains a challenge. This chapter, therefore, argues that a more inclusive policy and institutional frameworks are necessary to protect women in conflict and post-conflict situations, in order to ensure that women's social, political, and economic needs are met. Until this is achieved, the new gendered legal regime on peace and security may not achieve its desired purposes.

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<sup>10</sup> Organization of African Unity, Constitutive Act of the African Union (1 July 2000) OAU Doc. CAB/LEG/23.15 Replaces the Charter of the Organization of African Unity.

<sup>11</sup> Maltosa Khabele, 'Democracy and Conflict in Africa Challenges of Post Conflict Reconstruction' (2006) 1 *Conflict Trends*.

## 2. Background discourse of the UN Women, Peace and Security Agenda

Women's transnational peace agitation for inclusion can be traced to the discourse of peace and security during the First World War.<sup>12</sup> These efforts led to the establishment of an International Committee of Women for Permanent Peace in 1919, which later became a platform for women waging peace.<sup>13</sup> The UN Charter designates general duties of peace and security to the Security Council,<sup>14</sup> one of its central organs, which is empowered by Chapter 7 of the Charter to support military intervention and economic sanctions<sup>15</sup> where any threat to international peace and security exists.<sup>16</sup>

The need for the United Nations to adopt gender as an analytical tool was recognised during the drafting of Resolution 1325; indeed, it was noted that '*the mindset, especially of men must change and give way to new thinking and a new beginning for the UN in the field of conflict Resolution and peace keeping*',<sup>17</sup> making a call for women to be 'equal participants' in conflict resolutions and peacekeeping.<sup>18</sup>

Thus, when Resolution 1325 was adopted in October 2000, it signified a formal legitimisation of women's inclusion in peace and security arrangements at the international level, and a formal call for increased participation of women in decision making in conflict prevention,

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<sup>12</sup> Dianne Otto, 'A Sign of 'Weakness'? Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325' (2006) 13:1 *Michigan Journal of Gender and Law* 113-175.

<sup>13</sup> Otto (n 12) 115.

<sup>14</sup> See generally Article 24(1) of the UN Charter (24 October 1945) 1 UNTS XVI.

<sup>15</sup> Richard Lillich, 'Role of the UN Security Council in Protecting Human Rights in Crisis Situations: UN Humanitarian Intervention in the Post-Cold War World' (1995) 3 *Tul. J. Int'l and Comp. L.* 1.

<sup>16</sup> See generally Article 39, Chapter 7 of the UN Charter above.

<sup>17</sup> Theo-Ben Gurirab, 'Namibian Minister for Foreign Affairs, Information and Broadcasting', cited in Otto (n 12) 140.

<sup>18</sup> Dianne Otto, 'The Exile of Inclusion: Reflections on Gender Issues in International law over the Last Decade' (2009) 2 *Melbourne Journal of International Law*. See also UN Security Council, 4208<sup>th</sup> mtg. (24 October 2000) S/PV.4208.

management, and resolution.<sup>19</sup> Some described the efforts as a ‘watershed political framework’;<sup>20</sup> others described it as a landmark Resolution and ground-breaking because the United Nations Security Council ‘had never before turned its full attention to the issue of women, peace and security’.<sup>21</sup> The Resolution is seen to have moved ‘international discourse and debate on women’s role in international security’ and re-defined the position of women in the context of conflict.<sup>22</sup>

The UNSCR 1325 comprises eighteen operational paragraphs that address issues of women, peace, and security from a broad perspective. Apart from recognising the roles that women play in peace building,<sup>23</sup> it acknowledges women’s rights to ‘increased representation’<sup>24</sup> and ‘participation at peace tables’.<sup>25</sup> It urges state parties to integrate gender perspectives in peace building and conflict resolution<sup>26</sup> during repatriation, resettlement, rehabilitation, reintegration and post-conflict reconstruction.<sup>27</sup> It also focuses on protection and respect for the human rights of women and girls,<sup>28</sup> and protects women and girls from gender-based violence.<sup>29</sup> The

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<sup>19</sup> See UNSCR 1325 [2].

<sup>20</sup> Laura J. Shepherd, ‘Power and Authority in the Production of United Nations Security Council Resolution 1325’ (2008) 52.2 *International Studies Quarterly* 383–404. See also Elizabeth Rehn and Ellen J Sirleaf, ‘Women War and Peace: The Independent Expert Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace Building’ (UNIFEM 2002) <<http://www.ucm.es/cont/descargas/documento7201.pdf>> accessed 17 March 2010.

<sup>21</sup> Shepherd n (20) 384.

<sup>22</sup> Aisling Swaine, ‘Assessing the Potential of National Action Plans to Advance Implementation of United Nations Security Council Resolution 1325’ *Yearbook of International Humanitarian Law*, vol 12 (Cambridge University Press 2009) 403-433; Transitional Justice Institute Research Paper No. 10-01; TL Tryggestad, ‘The UN and the implementation of UN Security Council Resolution 1325 on Women Peace and Security’ (2009) 15 *Global Governance* 539; Fionnuala Ní Aoláin, ‘Gendered Under-Enforcement in the Transitional Justice Context’ (2009) *Minnesota Legal Studies Research Paper* 9-33.

<sup>23</sup> See UNSCR 1325 Preamble.

<sup>24</sup> *ibid* Clause 1.

<sup>25</sup> *ibid* Cl. 2.

<sup>26</sup> *ibid* Cl.5.

<sup>27</sup> *ibid* CL.8.

<sup>28</sup> *ibid* Cl.8(c).

<sup>29</sup> *ibid* Cl.10 and 11.

Resolution additionally enjoins gender mainstreaming into peacekeeping missions and all other aspects relating to women and girls.<sup>30</sup>

Prior to the adoption of 1325, there was criticism of the inadequacy of the existing legal instruments on armed conflict, finding them not sophisticated enough to respond to the ‘complex intersection of gender, ethnicity and other aspects of identity’ that stare women in the face during armed conflict.<sup>31</sup> However, with the WPS, Barrow for example affirms that the adoption of UNSCRs 1325 and 1820 may be useful for the recognition of women’s multiple roles in conflict, and may support the desired linkage of peace with gender equality.<sup>32</sup> While this commitment represents progress in efforts to address gender and armed conflict issues, the situation of women in conflict in Africa still remains alarming and deserves more attention.<sup>33</sup>

In 2008, the UN went further in adopting Resolution 1820, which broadly addressed *issues of sexual violence in armed conflict*.<sup>34</sup> The Resolution also called for ‘effective steps to prevent and respond’ to such acts of sexual violence, ‘in order to ensure maintenance of international peace and security’. It enjoined state parties to encourage dialogue among conflict resolution and peace building stakeholders.<sup>35</sup> Like Resolution 1325, it called for the participation of women in the local community in conflict resolution.<sup>36</sup>

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<sup>30</sup> *ibid* Clause 15.

<sup>31</sup> Amy Barrow, ‘UN Security Council Resolution 1325 and 1820: Constructing gender in armed conflict and International Humanitarian law’ (March 2010) 92.877 *International Review of the Red Cross* 221-234.

<sup>32</sup> *ibid* 229.

<sup>33</sup> Anu Pillay, ‘Gender, Peace and Peacekeeping: Lessons from Southern Africa’ (2006) 128 *ISS Paper* (2006) 2.

<sup>34</sup> UNSCR 1820 [1].

<sup>35</sup> *ibid* Clause1]

<sup>36</sup> *ibid* [3].

Furthermore, in 2009 the Security Council adopted Resolution 1888 to further strengthen the earlier resolutions on WPS.<sup>37</sup> UNSCR 1888 focused on peace operations' duty and responsibility to protect women and girls from sexual and gender-based violence. It strengthened the commitment in UNSCR 1820, and re-emphasised the importance of addressing sexual violence issues from the:

[...] outset of peace processes and mediation efforts, in order to protect populations at risk and promote full stability, in particular in the areas of pre-ceasefire humanitarian access and human rights agreements, ceasefires and ceasefire monitoring, Disarmament, Demobilization and Reintegration (DDR), Security Sector Reform (SSR) arrangements, justice and reparations, post-conflict recovery and development.<sup>38</sup>

Like the other two, the Resolution notes the underrepresentation of women in formal peace processes and the lack of expertise in issues of gender and peace building, specifically highlighting '*the lack of women as Chief or Lead peace mediators in United Nations-sponsored peace talks*'.<sup>39</sup> The Resolution recognises the importance of women's empowerment and support for women's organisations and networks 'in the consolidation of peace', reaffirming the significance of 'inclusion of women in peacekeeping missions in civil, military and police functions'.<sup>40</sup>

Resolution 1960 became the fifth Resolution titled 'Women, Peace and Security', and is the most recent. Adopted in December 2010, it reaffirmed the commitment of the other resolutions and called for more commitment towards ending impunity regarding sexual violence, as well as

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<sup>37</sup> Kristine St-Pierre, 'Background Paper, Implementing the Women, Peace and Security Agenda in Peace Operations; Overview of Recent Efforts and Lesson Learned' Pearson Peacekeeping Center, Workshop on 'The Women, Peace and Security Resolutions: From Rhetoric to Reality' (convened by Peace building in Ottawa 2011) <<http://www.peacebuild.ca/St-Pierre-%20WPS%20in%20Peacekeeping.pdf>> accessed 12 September 2012.

<sup>38</sup> UNSCR 1888 [17].

<sup>39</sup> UNCR 1888, Preamble.

<sup>40</sup> *ibid.*

calling on parties to armed conflict ‘to make and implement specific time bound commitments to combat sexual violence’ and hold perpetrators accountable.

The Resolution is specifically committed to tracking and monitoring the implementation of the WPS agenda. The intervention of the UN in conflict prevention and reconstruction has been commended in recent times as a valuable step necessary for global development and solidarity. However, critics have dismissed its achievement as selective<sup>41</sup> and mere ‘social work’ targeted at Third World countries to further a ‘neo colonial imposition of standards of civilization’.<sup>42</sup>

### **3. Gender Mainstreaming in context**

Charlesworth observes that the term gender mainstreaming has become a “mantra” used in the international community for addressing gender inequalities’.<sup>43</sup> This strategy became more prominent in the 1990s to respond to what was then seen as ‘gender side streaming’, but became omnipresent in the international arena<sup>44</sup> and a critical tool for resolving the implied gender inequalities that exist on issues of peace and security.

The Beijing Platform for Action (BPFA) adopted gender mainstreaming as an equality policy framework and global strategy offering opportunities for integration of gender concerns.<sup>45</sup> It also provided goals – committed to by international participants – that would lead to development,

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<sup>41</sup> M. Thatcher, ‘Advice to a Super Power’ *New York Times* (New York, 1 February 2002) in Chinkin and Charlesworth (n 8) 937.

<sup>42</sup> A. Gosh, ‘The Global Reservation notes towards an ethnography of International peacekeeping’ (1994) 9:3 *Cultural Anthropology*. 412-422.

<sup>43</sup> Hilary Charlesworth, ‘Not waving but drowning: Gender Mainstreaming and Human Rights in the United Nations’ *Harvard Human Rights Journal* 18:1(2005) pp. 1-18.

<sup>44</sup> *ibid* 5.

<sup>45</sup> Fourth World Conference on Women, Beijing, P.R.C., Sept. 4–15, 1995, Beijing Declaration and Platform for Action (15 September 1995) A/CONF. 177/20 BPFA DOC [135], *Gender Mainstreaming: An Overview* (2001) DAW/OSAGI and *Gender Mainstreaming: Strategy for Gender Equality* (2001) OSAGI.

peace, gender equality, and the full realisation of freedom for women.<sup>46</sup> These were reaffirmed in the Economic and Social Council's (ECOSOC) Agreed Conclusion (1997), which defined gender mainstreaming as:

The process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is gender equality.<sup>47</sup>

While the intention above might be to move the debate of equality between the sexes from being a 'woman issue' to the UN focusing on achieving gender equality concerns, it has been criticised as both too broad and too narrow to benefit the discourse of gender equality in the international arena.<sup>48</sup>

The UN has since been promoting gender integration through its establishments, such as the Inter Agency Network on Women and Gender Equality (IANWGE) and UNIFEM; it also established a Taskforce on Women, Peace and Security.<sup>49</sup> However, the inclusion of gender mainstreaming strategy in UN Security Council Resolutions reflects broader UN gender equality policies, which

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<sup>46</sup>See Joyce P Kaufman and Kristen P Williams, *Women and War; Gender Identity and Activism in Times of Conflict* (Kumarian Press 2010) 98.

<sup>47</sup> The Agreed Conclusions are contained in "Report of the Economic and Social Council for 1997" (adopted by the Economic and Social Council at its 33rd meeting, on 18 July 1997) A/52/3/Rev.1 where Gender mainstreaming was described as a 'system wide and a broad based strategy'.

<sup>48</sup> See Charlesworth (n 43) 13.

<sup>49</sup> Sari Kuovo 'United Nations and Gender Mainstreaming: Limits and Possibilities' in Doris Buss and Ambreena Manji (ed), *International Law: Modern Feminist Approaches* (Hart Publications 2005) 238.



move away from addressing gender issues through specialised women-centred initiatives.<sup>50</sup> Its efficacy is questionable, and it has attracted much criticism.<sup>51</sup>

One major criticism is the conflation of the words gender and women;<sup>52</sup> oftentimes, in the international parlance of peace-building, one means the other.<sup>53</sup> Charlesworth notes the defects in applying the concept of gender mainstreaming, which she describes as the ‘indistinct analogy’<sup>54</sup> of gender and sex, whereby the roles of men and women are identified as ‘natural and immutable’.<sup>55</sup> Otto’s work provides an example of this misrepresentation of women and gender in her analysis of the Secretary General (SG) Report. The report states that ‘a focus on gender mainstreaming in conflict and post conflict situations involves recognizing women. Girls, men and boys participate in and experience conflict, peace processes and post conflict recovery differently’.<sup>56</sup> She argues that the report reduces gender to ‘biology’ and excludes gender equality, which is supposedly the major aspect of mainstreaming.<sup>57</sup>

Another study has shown that this misrepresentation has been responsible for the major set-back in the Women, Peace and Security agenda;<sup>58</sup> those responsible for supporting peace-building processes pay less attention to the norms regulating gender, and as such, prevent the desired

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<sup>50</sup> *ibid* 238.

<sup>51</sup> *ibid* 238; Chinkin and Charlesworth (n 8) 940. See Otto (n 12); Charlesworth (n 43) 2.

<sup>52</sup> Richard Strickland and Nata Duvvury, ‘Gender Equity and Peace Building’ A Discussion Paper (International Center for Research on Women [ICRW] (2003); see also Sally Baden and Anne Marie Goetz, ‘Who Needs [Sex] When You Can Have [Gender]? Conflicting Discourses on Gender at Beijing’ in Cecile Jackson and Ruth Pearson (eds), *Feminist Visions of Development: Gender Analysis and Policy* (Routledge 1998) 19, 24–25.

<sup>53</sup> Chinkin and Charlesworth (n 8) 940.

<sup>54</sup> Hillary Charlesworth, ‘Feminist Scholarship in International Law’ in Sari Kuovo (ed) *Feminist Perspectives on Contemporary International Law; Between Resistance and Compliance?* (Hart Publishing 2011) 30.

<sup>55</sup> Charlesworth (n 43) 15

<sup>56</sup> Otto (n 12) 166, where Otto refers to the SG report ‘Women, Peace and Security; Study submitted by the Secretary General pursuant to Security Council Resolution 1325 (2002) E.03.IV.1.

<sup>57</sup> *ibid* 166.

<sup>58</sup> Strickland and Duvvury (n 52) 4.

transformation to more equal gender relations. For example, in the UNSCR 1325, there appears to be confusion about the meaning of gender mainstreaming in the text. One of the central goals of the Resolution is to mainstream gender perspectives in peace negotiations; however, the Resolution presents gender as related only to women, not connecting it with the masculine identities accepted during conflicts, because they are coded as male.<sup>59</sup> Considered globally, this misrepresentation may be inimical to the desired transformational outcomes for the targeted beneficiaries.

Proponents of gender mainstreaming argue that its proper understanding will be beneficial, since it is a strategy that targets ‘equality of outcomes rather than equality of opportunities’.<sup>60</sup> However, the extent to which efforts have translated to equal opportunities in the UN, or have promoted gender equality through gender mainstreaming, is debatable, particularly in the context of WPS at the national and regional levels. Moser’s review of the progress made within the UN and other international organisations on gender mainstreaming shows that while most institutions have put in place policies of gender mainstreaming, ‘implementation remains inconsistent’, and as such the supposed ‘gender equality outcomes remain largely unknown’.<sup>61</sup>

The adoption of the concept in 1997 has no doubt led to an increased feminist presence in the UN,<sup>62</sup> and more attention to the issue of WPS. One of the gains of gender mainstreaming in the UN has been the increase in the number of women in peacekeeping operations – in East Timor, for example, the UN established an official institutional mechanism to deal with WPS issues,

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<sup>59</sup> Charlesworth (n 43) 15.

<sup>60</sup> Barrow (n 31) 225.

<sup>61</sup> Caroline Moser and Annalise Moser, ‘Gendermainstreaming since Beijing: A review of success and limitations in international institutions (2005) 13:2 *Gender and Development* 11-22.

<sup>62</sup> Otto (n 18) 12.

which later crystallised into the appointment of a special gender adviser as part of the peace operations.<sup>63</sup> The first female police adviser in the Department of Peace Keeping Operations was appointed in 2011, while gender advisers – mostly women – have been provided to several field missions; Slovenia appointed the first female brigadier, and another woman was deployed to the UN Truce Supervision Organisation (UNTSO) in Lebanon, along with several other appointments of women and gender experts.<sup>64</sup>

Since 2002, countries have been encouraged by the UN Secretary General to adopt NAPs to support the implementation of UNSCR 1325's peace building agendas,<sup>65</sup> and state parties have begun adopting these to address gender equality and security issues post-conflict. Presently, NAPs have been incorporated in 37 countries, of which nine are African, including Sierra Leone and Liberia.<sup>66</sup> The integration of UNSCR 1325 and the National Action Plans in these two West African countries is significant to the discourse of gender justice for post-conflict transformation. In these countries, the NAPs localise the aspirations of the first two UNSC Resolutions; their adoption thus brings the global legal WPS framework to African women's doorsteps.

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<sup>63</sup> Chinkin and Charlesworth (n 8) 940. Catherine Mackinnon was also appointed as the gender adviser on gender crimes to the International Criminal Court, and a female special representative of the UN to Liberia was also appointed see (See Press Release 'Catherine Mackinnon as Special Adviser on Gender Crimes', 26 November 2008ICC-OTP-20081126-PR377).

<sup>64</sup> Security Council 'Report of the Secretary General on Women, Peace and Security' (29 September 2011) S/2011/598, 11.

<sup>65</sup> Security Council, 'Statement by the President of the Security Council' (31 October 2002) S/PRST/2002/32, 2, where the President states that '*The Security Council, recalling its resolutions 1265 (1999), 1296 (2000), 1324 (2000) and 1379 (2001), encourages Member States, the entities of the United Nations system, civil society and other relevant actors, to develop clear strategies and action plans with goals and timetables, on the integration of gender perspectives in humanitarian operations, rehabilitation and reconstruction programmes, including monitoring mechanisms, and also to develop targeted activities, focused on the specific constraints facing women and girls in post-conflict situations, such as their lack of land and property rights and access to and control over economic resources*'.

<sup>66</sup> See Peace Women 'List of National Action Plans' <<http://www.peacewomen.org/naps/list-of-naps>> accessed on the 10 August 2012.

#### **4. Post-conflict reformulations: Gender mainstreaming in peace negotiation and processes in Sierra Leone and Liberia**

*The UNSCR 1325 specifically calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective and support women's local initiatives*<sup>67</sup>

Bell notes that in the 1990s, peace agreements were viewed as mere contract agreements between the parties. However, this has since changed: they have become road maps defining post-conflict goals that can affect a broad range of governance, legal, socioeconomic, policy, and institutional issues.<sup>68</sup> Therefore, an attempt to exclude women's issues in peace agreement portends a great challenge to post-conflict reformulations. Chinkin puts this more succinctly:

The legitimacy of the implementing action derives from the peace agreement, which tends to acquire a weight and authority of its own. If a particular policy is not within the mandate specified by the agreement it may be hard to convince those implementing the agreement to address the issue.<sup>69</sup>

Prior to the ceasefire in Sierra Leone, the government and rebel forces signed four peace agreements: the Abidjan Peace Accords (1996), the Conakry Peace Plan (CPP) (1997), the Lomé Peace Agreement (1999), and the Abuja Cease Fire Agreement (ACA) and protocols (2001).<sup>70</sup> Women took part in the informal process of mobilising for peace through the period of the peace negotiations. Moreover, two women were part of the Lomé Peace agreement, with one representing the Revolutionary United Front (RUF) and the other the government of Sierra

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<sup>67</sup> UNSCR 1325 [8].

<sup>68</sup> Christine Bell and Catherine O'Rourke, 'Peace Agreement or Pieces of Paper? The Impact of UNCE Resolution 1325 on Peace Processes and their Agreement' (2010) 59 *ICLQ* 941-980.

<sup>69</sup> C. Chinkin, 'Peace Agreements as a Means for Promoting Gender Equality and Ensuring the Participation of Women' United Nations Division for the Advancement of Women (31 October 2003) EGM/PEACE/2003/BP.1, 12, 947.

<sup>70</sup> Mohamed Gibril Sesay and Mohamed Suma 'Transitional Justice and DDR: The case of Sierra Leone' (2009) *International Center for Transitional Justice* 6.

Leone.<sup>71</sup> There is no evidence showing that they were there to represent the interests of women at the peace negotiation table. They were also witnesses, not the core negotiators.<sup>72</sup> The UN played an active role in the peace negotiations in Sierra Leone, but contrary to the goals of the UNSCR 1325, women's participation was limited. The exclusion of women reaffirmed Anderson's concerns about the one-sidedness of peace intervention and the credibility of the UN to support gender equality as a robust peace component.<sup>73</sup>

The imperative for women's representation and participation in peace building cannot be over-emphasised. As Bell and O'Rourke observe, '*a gender perspective would also be expected to influence how the peace agreement deals with issues which do not mention gender but which fundamentally structure gender relations*'.<sup>74</sup> Historically, women's agencies have been at the forefront of organising for peace; women's solidarity in search for peace was especially pronounced during the First World War, with the Hague Congress of Women in 1915.<sup>75</sup> In 1998, the 'Women in Black' movement organised several peace rallies in Israel and led peaceful protests to challenge the occupation of the West Bank and Gaza; the movement subsequently spread to Spain, Azerbaijan, and the former Yugoslavia, where women in Belgrade stood in a peaceful vigil to protest the war.<sup>76</sup> Cohn also recently narrated the experiences of women in Solomon Island, Vanuatu, Bougainville, and Fiji, when they demanded to be included at the

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<sup>71</sup> Dyan Mazurana and Christopher Carlson, 'From Combat to Community: Women and Girls of Sierra Leone' (Hunt Alternative Funds 2004) 15.

<sup>72</sup> UNIFEM, 'Women Participation in Peace Negotiation; Connections between Presence and Influence' (2009) <[http://www.realizingrights.org/pdf/UNIFEM\\_handout\\_Women\\_](http://www.realizingrights.org/pdf/UNIFEM_handout_Women_)> accessed on the 12 August 2011.

<sup>73</sup> Letitia Anderson, 'Politics by other Means: When does Sexual Violence Threaten International Peace and Security?' (2010) 17:2 *International Peace Keeping* 224-260.

<sup>74</sup> Bell and O'Rourke (n 68) 979. See also Sanam Naraghi Anderlini, 'Women at the Peace Table, Making a Difference' (2000) United Nations Development Fund for Women <[http://www.unifem.org/resources/item\\_detail.php?ProductID=15](http://www.unifem.org/resources/item_detail.php?ProductID=15)> accessed 12 August 2011.

<sup>75</sup> Otto (n 12) 114.

<sup>76</sup> Kaufman and Williams (n 46) 67.

peace table organised by the Security Council.<sup>77</sup> All of these examples confirm that women have not been passive in demanding that their voices be heard.

The above describes the global situation facing women in conflict and their exclusion both at the local peace table and the supposedly more liberal international peace discussions. While much has been said about the radical nature and potential of UNSCR 1325 to change the situation of women in armed conflict, women are confronted daily with how to deal with the ‘gender uncertainties’<sup>78</sup> and patriarchal structures of the peace building institution itself. This is evident in the case of Sierra Leone, where there was more attention on the warring parties and the focus of the negotiations was far from addressing gender interactions that took place during the war. For example, during the Lomé peace talks, the Revolutionary United Front (RUF) demanded positions in government, amnesty, and other benefits for combatants.<sup>79</sup> The agreement led to power sharing, which gave the rebel forces leadership positions in government.<sup>80</sup>

However, as feminist scholars note, in exclusions of this nature, where the so-called peace agreement alluded to women’s rights, it portrayed women as helpless.<sup>81</sup> The Lomé Peace Agreement (LPA)<sup>82</sup> of 7 July 1999 is a good example of this analogy. Amongst other things, the LPA states:

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<sup>77</sup> Carol Cohn, Helen Kinsella, and Sheri Gibbings, ‘Women Peace and Security: Resolution 1325’ (2004) 6 *International Feminist Journal of Politics* 130-140.

<sup>78</sup> Dianne Otto, ‘Power and Danger: Feminist Engagement with International Law through the UN Security Council’ (2010) 32 *The Australia Feminist Law Journal* 160.

<sup>79</sup> See Sesay and Suma (n 70) 6. See also William A Schabas, ‘The Sierra Leone Truth and Reconciliation Commission’ in Naomi Roht-Arriaza and Javier Mariezcurrena (eds), *Transitional Justice in the twenty first century; Beyond Truth Versus Justice* (Cambridge University Press 2008) 21-43.

<sup>80</sup> See Sesay and Suma (n 70) 6.

<sup>81</sup> Bell and O’Rourke (n 68) 968.

<sup>82</sup> ‘Peace Agreement Between The Government Of Sierra Leone And The Revolutionary United Front Of Sierra Leone’ (25 May 1999 to 7 July 1999) (hereafter Called The ‘Lomé Peace Agreement’), ARTICLE IX.

Given that women have been particularly victimized during the war, special attention shall be accorded to their needs and potential in formulating and implementing national rehabilitation, reconstruction and development programs, to enable them to play a central role in the moral, social and physical reconstruction of Sierra Leone.<sup>83</sup>

While this is undoubtedly an acknowledgement of gross human rights violations suffered by women in Sierra Leone, and could lead to women's inclusion in the country's peace consolidation processes, there was no woman appointed to any of the organs created to initially manage transitional justice processes.

A survey of 585 peace agreements showed that the peace agreement context is not yet alert to the stark realities of women's daily lives. Further surveys by UNIFEM also demonstrated the challenge that women face in operationalising women's participation in peace processes. For example, in a sample of twenty-one peace agreements surveyed, less than 3% included women as signatories.<sup>84</sup>

The journey to peace agreements in Liberia was a tortuous and long one – the country had thirteen attempts at peace negotiations, starting from the Cotonun Agreement in 1993, which included blanket amnesty for all fighters, to the Abuja II agreement of 1996, after the first round of the war ended in 1997 with an election.<sup>85</sup> The war began again in 1999 with leadership squandering attempts to foster peace; Liberia experienced war for another couple of years until the Comprehensive Peace Agreement was signed in 2003 in Accra, Ghana.<sup>86</sup>

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<sup>83</sup> Lomé Peace Agreement, Article XXVIII: 'Post-War Rehabilitation and Reconstruction'.

<sup>84</sup> UNIFEM(2009) 1.

<sup>85</sup> Thomas Jaye, 'Transitional Justice and DDR: The case of Liberia' (2009) *International Center for Transitional Justice* 4.

<sup>86</sup> *ibid* 5.

Women in Liberia attempted to deconstruct male dominance during the peace negotiation processes.<sup>87</sup> As Clarke notes, women used their informal structures to positively engage in the peace process and were able to get the warring factions to sign the Comprehensive Peace Agreement (CPA). Though they were not formally accepted to the peace table,<sup>88</sup> women challenged ‘the patriarchal power of political leaders’ – who were using the peace process mechanism to achieve personal gain – and were thus able to persuade the warlords to sign agreements amongst themselves.<sup>89</sup>

Unfortunately, however, despite this influence of the women’s movement, neither the peace agreement nor CPA made any mention of gender or women, nor were there commitments to support efforts to address gender-based violence prevalent in the Liberian conflict.<sup>90</sup> Yet the resilience of these women at the peace negotiations in Liberia might have in part contributed to the few gender gains made by women post-conflict.

An important example of how women have used informal structures to support the peace process is the experience of the women’s movement in the Democratic Republic of Congo (DRC). In this case, very few women attended the national peace process in 2002, but the women’s peace movement was nonetheless able to lobby the Congolese legislative authorities to reform the national criminal laws. This led to the adoption of a new rape law in the DRC and other gains ensuring that the post-transitional Constitution in December 2005 guaranteed parity between

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<sup>87</sup> See also Anderlini (n 74). 20 describing the Liberia Women Initiatives (LWI)

<sup>88</sup> Only one woman attended as a representative of the Civil Society.

<sup>89</sup> Yaliwe Clarke, ‘Security Sector Reform in Africa: A lost opportunity to deconstruct Militarised Masculinities?’ (2008) *Feminist Africa* 49.

<sup>90</sup> *ibid* 50.



men and women in state institutions.<sup>91</sup> Similarly, in Burundi, where women represented only 10% of those who participated in the Arusha peace negotiations, lobbying led to the signing of a peace accord between the fighting factions in 2002. Despite their low representation at the table of negotiations in Arusha, women were able to successfully lobby for the inclusion of 30% quota for women, which was included in the draft constitution adopted by referendum in July 2005.<sup>92</sup> Another example is Somalia, where, like Liberia, men met women peacemakers' insistence on participation with initial resistance. However, women were able to partially access the formal processes at the AU/UN sponsored peace conference in Somalia, and negotiate their rights through other informal lobbying; this led to the reference made to women's issues in the outcome document.<sup>93</sup> A further development was the Great Lake Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, which was adopted in response to the war ravaging the region. Despite very impressive provisions addressing sexual violence, sadly the Protocol is not properly enforced.<sup>94</sup> Some peace agreements also recognise the need for some form of affirmative action, for example the Great Lakes Agreement, Protocol on Good Governance, Article 2 (j), *The equality of men and women*, including through affirmative action policies.<sup>95</sup>

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<sup>91</sup> Ndeye Sow, 'Gender and Conflict Transformation in the Great Lakes Region of Africa', *International Alert Report 13* <<http://www.glow-boell.de>> accessed 2 July 2011.

<sup>92</sup> *ibid* 13.

<sup>93</sup> Heidi Hudson, 'Gender Peace-Building and Post Conflict Reconstruction in Africa; Breaking the Chain Between Inequalities and Violence' in Drik Kotze et al. (eds), *Post-Conflict Reconstruction and Development: Lessons for Africa* (Africa Institute of South Africa 2008) 26.

<sup>94</sup> See the international Conference on the Great Lakes Region 'Protocol on the Prevention and Suppression of Sexual Violence against Women and Children' (30 November 2006) <<https://icglr.org/IMG/pdf/Prevention-Fight-sexual-exploitation.pdf>> accessed 29 August 2012.

<sup>95</sup> International Conference on the Great Lakes Region Protocol on Democracy and Good Governance (1 December 2006) <[https://icglr.org/IMG/pdf/Protocol\\_on\\_democracy\\_and\\_Good\\_Governance.pdf](https://icglr.org/IMG/pdf/Protocol_on_democracy_and_Good_Governance.pdf)> accessed 29 August 2012.

The above demonstrates the influence and potential that women can bring into peace processes – if the formal process is open to allow them to contribute positively to promoting gender equality and social justice.

In some of the instances mentioned above, women did not directly benefit from the peace agreement text, which confirms Bell’s review showing that less than 12% of the peace agreements made reference to ‘women’.<sup>96</sup> As Chinkin observes, the specific inclusion and mention of women in peace agreements could be a ‘transformative moment’ for securing social justice and affirming their human rights within the context of the state.<sup>97</sup> Thus, if ‘women’ are rarely mentioned in peace agreements, their exclusion in the peace framework endangers the intention and aspirations of the WPS agenda.

Accessing formal peace processes has been challenging to women, and this is significant for many reasons: peace agreements have a quasi-constitutional quality and can ensure better inclusion in post-conflict arrangements.<sup>98</sup> This view is also echoed by Gibbings, who writes that *‘demanding the inclusion of women in institutional process and practices (no matter how distorted that inclusion is) can challenge and alter categorization and meaning in peace building’*.<sup>99</sup>

Former UN Secretary General Kofi Annan also emphasised the importance of women participating in the formal process, arguing that this would facilitate better post-conflict

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<sup>96</sup> Bell and O’Rourke (n 68) 954.

<sup>97</sup> *ibid* 954.

<sup>98</sup> *ibid* 948.

<sup>99</sup> Cohn et al. (n 77) 130.

outcomes and justice.<sup>100</sup> It is important that peace agreements also address socio economic rights; oftentimes this is not the case.

### **5. Gender Mainstreaming in Disarmament, Demobilization and Reintegration (DDR) Programme**

The UNSCR 1325 ‘*encourages all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependents*’.<sup>101</sup> One of the first steps in most post-conflict contexts is disarmament and demobilisation. Sierra Leone and Liberia adopted the Disarmament Demobilization and Reintegration programme, creating an opportunity for the UN to test the efficacy of UNSCR 1325.

#### **Sierra Leone**

In Sierra Leone, all four peace agreements provided for demobilisation and resettlements. The first efforts at demobilisation came after the Conakry Peace Plan, which targeted 75,000 for disarmament; about 3,000 were disarmed before the war broke out in 1999.<sup>102</sup>

According to the International Center for Transitional Justice report, the Lomé DDR led to the disarmament and demobilisation of 18,000 combatants, before it was aborted by another outbreak of war in 2000. The Abuja Agreement called for an immediate ceasefire and reinstated the DDR programme in May 2001.<sup>103</sup> Thus in Sierra Leone, in order to effectively oversee these

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<sup>100</sup> The UN Secretary General (2002) 212.

<sup>101</sup> UNSCR 1325 [13].

<sup>102</sup> Sesay and Suma (n 70) 10: the 1999 disarmament is categorised as phase 1.

<sup>103</sup> *ibid* 11.

programmes, the government of Tijan Kabbah established the National Committee for Disarmament, Demobilization and Reintegration (NCDDR) and the National Commission for Social Action (NACSA). According to available reports, ‘the NCDDR was able to disarm 72,490 ex-combatants, 42,300 weapons, and over 1.2 million rounds of ammunition’.<sup>104</sup> The process, however, had little impact on the reintegration of female ex-combatants into society, since it was not designed within a gender framework.<sup>105</sup>

Women associated with armed groups included medical care providers, spies, cooks, and active combatants. At the start of the DDR process, an estimated 45,000 ex-combatants were in need of support; 12% of this population was female. According to the UN Department of Peacekeeping Operations, at the end of 2002 more than 75,000 combatants were demobilised, yet only 6.5% were women.<sup>106</sup>

One reason that women did not participate in the DDR programme was related to the criteria for entry. In the first stages of DDR, the ability to receive benefits was based on weapon ownership.<sup>107</sup> Most women combatants either did not possess weapons, or their commanders had ordered them to hand their weapons over to male colleagues before demobilisation. Later, the programme permitted group disarmament, meaning that a group of combatants could report to reception centres with a single gun, and more women entered the programme. Another reason for the low participation of women was because of the stigmatisation attached to ex-combatants.

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<sup>104</sup> Amadu Sessay et al., ‘Post War Regimes and State Reconstruction in Liberia and Sierra Leone’ (2009) *CODESRA* 59.

<sup>105</sup> Chris Coutler, *Bush Wives and Girls Soldiers; Women’s Lives through War and Peace in Sierra Leone* (Cornell University Press 2009) 248.

<sup>106</sup> United Nations Mission in Sierra Leone (UNAMSIL), ‘The DDR Process in Sierra Leone: Lessons Learned’ (Freetown: UNAMSIL DDR Coordination Section 2003) in Sessay and Suma (n 70) 12.

<sup>107</sup> Mazurana and Carlson (n 71) 20.

Women did not want to be further labelled in their communities.<sup>108</sup> Mazurana et al.'s report additionally showed that the reintegration locations were also not gender-friendly; women and girls were afraid they might be attacked at the DDR Centre,<sup>109</sup> given the number of combatants attending, and the official denial that one of the rebel forces, the Civil Defence Force, did not engage female combatants.<sup>110</sup> Women who were conscripted by this force thus failed to appear.

Another issue was the general assumption that women were only victims and did not participate in the war as combatants. Most importantly, the women were disarmed by the commanders and discouraged from attending the DDR Centres. Women who participated as combatants and played supporting roles were tagged as 'camp followers' and abductees, while the men who did the same benefited from the DDR without being labelled.<sup>111</sup> The exclusion of women demonstrates the failure of the WPS agenda of the UN.

## **Liberia**

The United Nations Mission in Liberia was established via Security Council Resolution 1509 to implement the CPA. One of the major mandates of the mission was to implement the Disarmament, Demobilization, Rehabilitation and Reintegration programme (DDRR). The DDRR in Liberia took place after the conclusion of the Sierra Leone Programme and was completed in 2004 with 101,496 combatants disarmed and 90,000 participating in the

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<sup>108</sup> *ibid* 21.

<sup>109</sup> *ibid* 20. See also International Crisis Group, 'Sierra Leone: Managing Uncertainty' (24 October 2001) 35 *Africa Report* 14. There were reports of demonstrations and attacks on the officials managing the DDR processes in Lussar and Port Loko camps.

<sup>110</sup> Mazurana and Carlson (n 71) 21.

<sup>111</sup> Christiana Solomon, *Disarmament, Demobilisation and Reintegration in West Africa: An Overview of Sierra Leone and Liberia* (University of Bradford 2008) 11. See also Megan MacKenzie, 'Securitization and Desecuritization: Female Soldiers and the Reconstruction of Women in Post-Conflict Sierra Leone' (2009) 18.2 *Security Studies* 241-261.

rehabilitation and reintegration programme.<sup>112</sup> Field interviews for this thesis show that the DDRR also had two phases, with phase one excluding women but with phase two being more inclusive.

The Report by International Center for Transitional Justice shows that 22,370 women and 2,440 girls were disarmed and demobilised. Unlike in Sierra Leone, civil society participated and encouraged women to submit their arms and register at the DDRR Centres.<sup>113</sup> Women were treated separately from men and, in particular, the maternity age and status of women were taken into account. Health care, including maternity care, was provided on site.<sup>114</sup> It is estimated that women represented about 25-30% of the fighting forces in Liberia.<sup>115</sup> Despite this, without the efforts of women's networks<sup>116</sup> in ensuring that women were present at the cantonment sites in Liberia, the DDR would have failed to respond to women's human security needs because the programme was designed without a well thought-out gender response.<sup>117</sup>

Reports by Civil Society organisations showed that women were not properly integrated in the process.<sup>118</sup> One of the major challenges of past DDRs has been a gender-neutral arrangement excluding the majority of women. In Bosnia, the DDR programme failed to support the inclusion of women. Rather, it focused on demobilised soldiers – 'their boys coming home' – and the local communities treated the soldiers with respect, unlike the women who had suffered all forms of

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<sup>112</sup> United Nations Security Council: Fifteen Progress Report of the Secretary General on the United Nations Observer Mission in Liberia, UN Doc S/2007/479, 7 in Jaye (n 85) 34.

<sup>113</sup> See Jaye (n 85) 15.

<sup>114</sup> *ibid* 15.

<sup>115</sup> *ibid* 42.

<sup>116</sup> Clarke (n 89) 62.

<sup>117</sup> *ibid* 62.

<sup>118</sup> Isis-WICCE, 'A situation analysis of the Women Survivors of the 1989-2003 Armed Conflict in Liberia' (2008) *Research Report* 42.

violence as a result of the war.<sup>119</sup> The Liberia DDR also emphasised ‘gun carrying combatants’ and this usually excluded women.<sup>120</sup> From the victim’s point of view, however, the benefit of DDR was that it could undermine other transitional justice mechanisms – while reparation processes for victims are often slow, DDR is often a higher priority, and is one of the first steps any transitional government undertakes post-conflict. It is becoming clearer that failure to link the DDR with victim support, reparation, and rehabilitations means investment in DDR may generate resentment in transitional processes.<sup>121</sup>

With the assistance of international organisations, DRC and Burundi have adopted national DDR plans, as part of the Multi Country Demilitarization and Reintegration programme for the African Great Lakes region (MDRP) administered by the World Bank. However, the DDR processes and reforms have failed to take into account the needs of women, whether as combatants or supporters of armed groups, thus missing out on their enormous potential as peace-builders in the immediate aftermath of war. The DDR only placed priority on addressing ‘the needs of armed men, and have given less priority to those of women, including female combatants’.<sup>122</sup>

Testimonies from the field show that the UN DDRR process in Liberia originally was not designed to support women: ‘...the DDRR embarked on at the end of armed conflict in 2003 was

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<sup>119</sup> Massimo Moratti and Amra Sabic-El-Rayers, ‘International Transitional Justice and DDR; the Case of Bosnia and Herzegovina’ (June 2009) *ICTJ* <<http://www.ictj.org>> accessed 18 August 2012.

<sup>120</sup> Jaye (n 85) 42.

<sup>121</sup> Maria Dietrich Ortega, ‘Transitional Justice and Female Ex Combatants: Lessons Learned from International Experience,’ *Research Project on DDR and Transitional Justice* (International Center for Transitional Justice) <<http://www.ictj.org/en/researchproject/ddr/index/html> (2010) P 1-4> accessed 28 August 2012.

<sup>122</sup> Solomon (n 111) 11.

just addressing the men until we (Civil Society Organisation) moved in to insist that women should also benefit from the process'.<sup>123</sup>

Reports from Liberia also show that female combatants formally associated with the fighting forces did not participate in the DDRR for various reasons: shame, fear, stigmatisation, misinformation, lack of knowledge and understanding about the process, and manipulation by commanders. The delay in funding and the government's lack of political will were also major factors.<sup>124</sup> The perception of gender roles in conflict no doubt played a role in policy formulations. Most women combatants, rather than going through the DDRR, left their arms with their commanders. One interviewee recounts, 'I didn't go during the DDRR, I was afraid; I left my arm with my commander'.<sup>125</sup> According to another female combatant, it was the decision of her rebel group that the women should not go to the DDRR, 'so none of us went to submit our arms but we disarmed to our superior'.<sup>126</sup> Discouraging women from attending could also be a way for men to suppress women from benefiting from the DDRR programme, knowing fully that some empowerment programs are attached to it.

One of the respondents who participated in the DDRR process, however, narrates her experience:

*I came from Puma to disarm...the UN people kept us for seven days first time and later call us back for another 7 days; each of the time they gave us 150 US dollars and they also gave us identity card...people were selling their identity cards and several women gave their arms to men, they also gave us toiletries and food'.<sup>127</sup>*

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<sup>123</sup> Interview with Bernice in Women and Peace Network Office (Monrovia, Liberia, January 2012).

<sup>124</sup> See ISIS-WICCE (2008) p. 43.

<sup>125</sup> Interview with Clara (Monrovia, Liberia, January 2012).

<sup>126</sup> Interview with Mimie (Monrovia, Liberia, January 2012).

<sup>127</sup> Interview with Emy (Monrovia, Liberia, January 2012).



According to other reports, apart from the 150 US Dollars, no other financial packages seem to have been distributed to women.<sup>128</sup>

The DDRR process was criticised as a failure by most of the interviewees, even from government quarters; for example, a top gender ministry official said,

*The DDRR Programme did not go far, it did not take into consideration a lot of things... the DDRR was not effective. But we are not going to look back but we are moving forward; what need for do is to concentrate and to correct those mistakes in upcoming activities of the implementation process.*<sup>129</sup>

From the above, it is clear that the DDRR was constructed with a male bias, perceiving women as victims of conflict rather than actors, and this affected the outcome. Furthermore, it will be difficult to mainstream gender if we fail to address structural imbalances that will always restrain women from participating and benefiting from public goods.

Interviews conducted in Sierra Leone and Liberia show that the principle of gender mainstreaming did not guide the programme in either country. The reality was that men benefited from the reintegration processes, while the available options for vocational training did not take gender needs into consideration and the focus was more on male-dominated vocations than those targeting women.<sup>130</sup> Another emerging issue from the interviews in both countries was the capacity of those who came to implement DDR, and their failure to understand the context so as to adequately apply the principle of gender mainstreaming.

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<sup>128</sup> Annalise Moser, 'Women Count Security Council Resolution 1325: Civil Society Monitoring Report' (2010) A Project of the Global Network of Women Peacebuilders<sup>125</sup><<http://www.gnwp.org/what-we-do/policy-advocacy/in-country-and-global-monitoring-of-united-nations-security-council-resolution-1325>> accessed 20 June 2012.

<sup>129</sup> Interview with an official of the Gender Ministry (Monrovia, Liberia, January 2012).

<sup>130</sup> Interview with Morem (Freetown, Sierra Leone, 23 April 2010).

Gender mainstreaming has been criticised for its individual-centred approach, which makes it dependent on the capacity and ‘willingness or commitment of a particular individual’, who probably is leading the process; where the individual falters, gender mainstreaming collapses.<sup>131</sup> While the Resolution emphasises the need to integrate men and women and their dependents in DDR, in practice this did not happen. In 2003, UN Secretary General Kofi Annan reported to the Security Council that the Liberian situation called for special attention on the specific needs of female ex-combatants.<sup>132</sup> The failure of the DDR in both countries to meet the needs of ex-combatants, particularly women and other vulnerable groups, is well documented.<sup>133</sup>

The situation in Sierra Leone and Liberia raised several issues, including ownership of the process and need for such engagement to be founded on local norms and the culture of the people. While there has been some success recorded, in the overall interventions in both countries, the gains are unsustainable, given the reality of the situation.

## **6. WPS and the National Action Plans in Liberia and Sierra Leone**

In post-conflict Sierra Leone and Liberia, two gender machineries were put in place to address gender integration. This section briefly examines these two gender ministries and their roles in supporting gender mainstreaming.

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<sup>131</sup> Chinkin and Charlesworth (n 8) 940.

<sup>132</sup> Kofi Annan, ‘Report on Liberia’ (2003) <<http://www.womenpeace.org>> accessed 20 July 2011.

<sup>133</sup> Kathleen M. Jennings, ‘The Struggle to Satisfy: DDR Through the Eyes of Ex-combatants in Liberia’ (2007) 14.2 *International Peacekeeping* 204-218. See also Kathleen M. Jennings, ‘The political economy of DDR in Liberia: a gendered critique Conflict’ (2009) 9.4 *Security and Development* 475-494. See also Megan Bastick, ‘Integrating Gender in Post Conflict Security Sector Reform’ in *SIPRI Year Book 2008, Armaments, Disarmaments and International Security* (OUP 2008) 149-170.

The Sierra Leone Gender Ministry adopted a twin policy on gender mainstreaming and advancement of women in 2001 after the war. The policy was to develop the guiding framework for the advancement of women in the country.<sup>134</sup> In 2010, it adopted the Sierra Leone NAP<sup>135</sup> focusing on five pillars: prevention of conflict and sexual and gender-based violence; protection and empowerment of victims; prosecution and punishment of perpetrators; participation and representation; and resource mobilisation. In 2010, Sierra Leone was awarded the Peace Building Commission fund; however, there were no indications in the global Civil Society report that the funds should support the Women, Peace and Security agenda. As in most post-war contexts, the implementation of the WPS was plagued with challenges. Speaking at an expert meeting on mainstreaming gender and women's issues in multidimensional peace support operations, the Minister of Social Welfare, Gender and Children Affairs (MSWGCA) identified the following obstacles towards achieving gender mainstreaming in practice: funding, weak implementation of existing policies, and the gender ministry's weak capacity to implement and monitor gender mainstreaming efforts.<sup>136</sup>

The UN emphasises the issue of finance. UNSCR 1888,<sup>137</sup> for example, calls for state parties to ensure adequate financial and human resources to strengthen people's capacity to adequately

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<sup>134</sup> Government of Sierra Leone National Policy on the Advancement of Women (NPAW) 2006 and the National Policies on Gender Mainstreaming 2006.

<sup>135</sup> Government of Sierra Leone, 'The Sierra Leone National Action Plan for the full implementation of the United Nations Security Council Resolution 1325 (200) and 1820 (2009)' <[http://www.peacewomen.org/assets/file/NationalActionPlans/sierra\\_leone\\_nap.pdf](http://www.peacewomen.org/assets/file/NationalActionPlans/sierra_leone_nap.pdf)> accessed 28 August 2012.

<sup>136</sup> Experts Consultative Meeting; Towards a region specific manual for mainstreaming gender and women's issues in multi dimensional peace support operations in West Africa, held at the Kofi Annan International Peace Keeping Training Center, Accra, Ghana 21-22 July 2008

<[http://www.wipsenafrika.org/wipsen/publications/reports/file\\_2:en-us.pdf](http://www.wipsenafrika.org/wipsen/publications/reports/file_2:en-us.pdf)>accessed 12 August 2012.

<sup>137</sup> UN Security Council (22 November 2006) Res. S/1888/2009 (hereafter referred to as UNSCR 1888).

respond to critical issues in armed conflict.<sup>138</sup> Funding and capacity are critical to the successful implementation of the NAPs and the lack of it can raise further doubts about the long term impacts of gender mainstreaming,<sup>139</sup> the commitment and political will of governments to transform women's lives,<sup>140</sup> and the promotion and protection of women's rights in post-conflict situations.<sup>141</sup>

Article 10 of the African Women's Protocol enjoins state parties to take the necessary steps to spend on social development in general and promotion of women in particular. The Protocol further affirms that state parties should provide budgetary and other resources for full and effective implementation of women's rights.<sup>142</sup> The two countries are, however, committed to the achievement of the Millennium Development Goal<sup>143</sup> 3 on Gender Equality and Women Empowerment, and there is compelling evidence that poverty reduction can impact on sustainable growth. It has also been emphasised that gender mainstreaming is about targeting areas where change is needed; thus, changes in laws, policies and institutions are matters of advancing gender equality objectives. However, they come with a 'price tag'.<sup>144</sup> Therefore, the policy to promote gender equality at the state level will not translate to development if the state fails to commit substantial funds to the achievement of its purposes.

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<sup>138</sup> UNSCR 1888, Clause 22.

<sup>139</sup> Buss and Manji (n 49) 238.

<sup>140</sup> F. Beveridge and S. Nott, 'Mainstreaming A case for Optimism and Cynicism' (2002) 10 *Feminist Legal Studies* 299.

<sup>141</sup> Bell and O'Rourke (n 68) 975.

<sup>142</sup> Article 26 of the Protocol to the African Charter on Human and People's Rights on Rights of Women in Africa (2003) AU/Dec.14/.

<sup>143</sup> United Nations Millennium Development Declaration: General Assembly Resolution (8 September 2000) 55/2.

<sup>144</sup> Mayra Buvinic, Andrew Morrison, A. Waafs Ofosu-Amaah, and Mirjaa Sjoblom (eds), *Equality for Women: Where do we stand on millennium development goals?* (The World Bank 2008) 3.

## **Liberia**

In pursuit of the UN gender mainstreaming goals, the Liberian government created the Ministry of Gender and Development in 2001,<sup>145</sup> with a mandate to effectively coordinate government-wide gender mainstreaming efforts and ensure the centrality of men's and women's perspectives to government policies and planning. In 2009, the President adopted the National Gender Policy (NGP), which is yet to be validated by the Cabinet and forwarded to the National Legislature for enactment into law. The policy's overall goals were to mainstream gender in national development processes, to support women's and girls' empowerment, and to create gender-responsive structures and mechanisms that will aid the development of both men's and women's access to resources. The policy addressed the following issues: providing all sectors with guidelines for gender mainstreaming and strengthening human resource capacity for gender analysis; providing support for women's equal access/participation in decision-making structures and redressing gender imbalances in society; eradicating gender-based violence (GBV); promoting equal access/control over productive resources, services, and opportunities; recognising and valuing women's multiple roles, responsibilities, and contributions towards national development, and as beneficiaries; and finally, influencing the domestication of international law and facilitating the use of sex disaggregated data.<sup>146</sup>

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<sup>145</sup> An Act to amend the Executive Law title 12 for the establishment of a Ministry of Gender and Development, approved March 2001, Ministry of Foreign Affairs, Liberia (hereafter called Gender Ministry of Liberia Act 2001). See in particular, Section 38(3) of the Gender Ministry, Liberia Act 2001.

<sup>146</sup> Liberia: Responses to the list of issues and questions with regard to the consideration of the combined initial, second, third, fourth, fifth and sixth periodic report (11 May 2009) CEDAW/C/LBR/Q/6/Add.1.

In 2009 the government also adopted the Liberia National Action Plan (2009 - 2013),<sup>147</sup> which is fully coordinated by the Ministry of Gender.<sup>148</sup> The NAP focuses on four tenets: prevention, participation, protection, and empowerment and promotion. The NAP's activities will include policy reviews, building people's capacity, and research and documentation. In that same year, the National Gender Based Violence Plan of Action was adopted in Liberia to support the need to effectively and efficiently deal with the issue of gender-based violence, provide appropriate skills to health and psychosocial providers, reform the legal system, and provide mechanisms to support the establishment of outreach services for survivors of violence. A secretariat has also been created in the Ministry of Gender and Development, along with a taskforce and observatory committee on Resolution 1325, to monitor the implementation of the Resolution in the country.

The Ministry is seen as the major stakeholder in supporting the Women, Peace and Security Resolution. But while it can take the lead in programmes, setting up a 1325 secretariat in the Ministry may be disadvantageous to the gender mainstreaming agenda. This is because it indirectly runs against the intent and purposes of the goal to discourage a specialised women's entity to address women's issues. A multi-ministerial approach to 1325 would be more effective than a single-pronged approach with a task force.

One major challenge arising from recent studies is that despite commitments to WPS, very few countries made direct budgets to run the activities for the implementation of the UN

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<sup>147</sup> Government of Liberia, 'Liberia National Action Plan (2009-2013)' <[http://www.peacewomen.org/assets/file/NationalActionPlans/liberia\\_nationalactionplanmarch2009.pdf](http://www.peacewomen.org/assets/file/NationalActionPlans/liberia_nationalactionplanmarch2009.pdf)> accessed 13 January 2011.

<sup>148</sup> See Ministry of Gender and Development (2011-2015), the National Action Plan for the Prevention and Management of Gender Based Violence in Liberia (2nd phase).

Resolutions.<sup>149</sup> The studies show further that inadequate funding may hinder the successful implementation of UNSCR 1325 and other Resolutions. A review of Liberia's fiscal budget shows that in 2008, the Gender Ministry was allocated \$1,084,447 of the \$297 million annual budget, representing less than 0.36%; in 2009, it decreased to 0.34%.<sup>150</sup> Considering the Ministry's mandate to support WPS, it is unlikely that these allocations will support the implementation of the numerous activities highlighted under the NAP project. One example of a creative measure is the Philippines' policy, which earmarks a portion of government agencies' funds for gender and development.<sup>151</sup> Scholars have also observed that there is a need to work towards 'a realistic and comprehensive planning of resources and time frames'<sup>152</sup> in order to implement the NAPs.

In considering the CEDAW report of Liberia, the CEDAW Committee notes that while national gender machinery for the advancement of women with a clear mandate exists, the concern is that it lacks sufficient capacity and resources to effectively coordinate the implementation of the gender mainstreaming strategy across all sectors and levels of Government.<sup>153</sup> The CEDAW Committee therefore calls:

...on the State party to prioritize the strengthening of the national machinery and provide it with the necessary human and financial resources and authority to serve as a catalyst and to coordinate the implementation of the Convention and effective

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<sup>149</sup> Moser (n 128) 32.

<sup>150</sup> The Government of Liberia, 'Draft National Budget for the Fiscal Year July 1, 2009-June 30, 2010, The Ministry of Finance', cited in Moser (n 128) 38.

<sup>151</sup> *ibid* 38.

<sup>152</sup> Corey Barr, Kristen Cordell, Nicola Popovic, and Toiko Tõnisson Kleppe, 'Conference Report: Putting Policy into Practice: Monitoring the Implementation of UN Security Council Resolutions on Women, Peace and Security' (2010), Fokus and UN-INSTRAW, cited in Moser (n 128) 30.

<sup>153</sup> Liberia: CEDAW Concluding Observation to the combined initial, second, third, fourth, fifth and sixth periodic report (11 May 2009) CEDAW/C/LBR/CO/6 [16]

use of the gender mainstreaming strategy across all line ministries and sectors of Government at all levels.<sup>154</sup>

One area where there has been recorded success is in UN peacekeeping missions. The response to 1325 led to the establishment of gender units and special advisers on gender. However, without proper attention, such efforts may end up marginalising women and other gender needs. A priority area of the peacekeeping missions in Sierra Leone and Liberia is the security sector, entailing the strengthening of the National Police of both countries. The UNPOL adopts the gender mainstreaming approach – for example, a gender policy was developed with the support of the UNMIL and the United Nations Police (UNPOL). The policy set a 15% quota for women’s participation. This intervention led to an increase in the number of policewomen in Liberia, where the ratio increased to 20%. Progress has also been recorded with the Liberia National Police (LNP), where the UN’s first all-female peacekeeping contingent from India was deployed in January 2007. Since then, more women have shown interest in the LNP, and the state government has adopted a quota of 20% for women’s inclusion in the police and armed forces.<sup>155</sup>

In Sierra Leone, the adoption of gender policy also impacted on the number of women in peacekeeping missions; for example, 19% representation of individual police on peace missions, no expert representation on peace missions, and 5% representation among contingent troops.<sup>156</sup>

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<sup>154</sup> *ibid* [16].

<sup>155</sup> J.M. Guéhenno, Statement to the UN Security Council, Debate on Women, Peace and Security (23 October 2007)S/PV.5766, 5.

<sup>156</sup> Moser (n 128) 13.



However, very few women in either country are in leadership positions; in 2010, Sierra Leone produced the first female brigadier in West Africa.<sup>157</sup>

The Liberian process on Women, Peace and Security received many external contributions. Four major joint post-war initiatives exist in Liberia between the government and the UN: the United Nations Joint Programme (UNJP) to prevent and respond to sexual and gender-based violence; food security and nutrition; employment and empowerment of young women; and gender equality and women's empowerment.<sup>158</sup> The outcomes of these initiatives are promising, though they are still in their infancy.<sup>159</sup>

Liberia's gender project is largely donor-driven, and interviewees showed scepticism since the process is not institutionalised. There is a fear that once the donor or UN support is reduced, the state will be unable to sustain some of the initiatives. Given the above explanation, the idea of a National Action Plan is laudable; however, in most of the countries implementation processes lack adequate allocation of resources to ensure effective implementation. Another important issue is that for NAPs to be successful, they must focus on women's socio-economic needs, and support them in fighting poverty, depravity and exclusion.

## **7. Participation**

The issue of participation has been part of women's human rights norms since the first treaties put forward by the UN Commission on the Status of Women, the Convention on the Political

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<sup>157</sup> *ibid* 12.

<sup>158</sup> *ibid* 125.

<sup>159</sup> *ibid* 125.

Rights of Women 1962.<sup>160</sup> The CEDAW,<sup>161</sup> through Article 7 (a), provides for two major obligations to encourage women's participation, including the right to vote and stand in elections, while the second leg of the article covers both formal and informal rights for women to participate in the formulation of government policies.<sup>162</sup> The article also complements the political framework intended in UNSCR 1325; the CEDAW Committee at different times addressed the responsibility of state parties to support women's effective participation in formal and informal peace processes, and to support post-conflict reconstruction processes.<sup>163</sup> State parties are enjoined to take all necessary steps, including temporary measures, to ensure that women participate fully in practical terms.

Article 8 also presents a justification for the gender mainstreaming approach of the UN, which includes increasing the number of women as special representatives and envoys to peace missions. It specifically places an obligation on the state to support women to represent their government, providing women the opportunity to work at the international level.

The AU Protocol goes further to state that women and men benefit equally 'in the level of development implementation of State policies and development programmes', and also places an obligation on the state to 'ensure increased and effective representation and participation of women at all levels of decision-making.'<sup>164</sup> The CEDAW Committee affirms in its General

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<sup>160</sup> Convention on the Political Rights of Women 1953 193UNTS

<sup>161</sup> Convention on the Elimination of All Forms of Discrimination Against Women (18 December 1979) 1249 U.N.T.S. [hereinafter CEDAW 13 <<http://www.un.org/womenwatch/daw/cedaw/states.htm>> accessed 12 August 2012.

<sup>162</sup> Sarah Wittkopp, 'Article 7' in Freeman Marsha, Christine Chinkin, and Beate Rudolf, (eds), *UN Convention on the Elimination of all forms of Discrimination Against Women: A Commentary* (Oxford University Press 2012) 206. See also General Recommendation, No 23 on Women in Public Life, UN Doc A/52/38/Rev.1 [5].

<sup>163</sup> Wittkopp (n 162).

<sup>164</sup> See generally AU Women's Protocol, art. 9.

Recommendation 23 paragraph 15 (1997) that ‘removal of de jure barriers is necessary, yet it is insufficient ...in Article 4, the Convention encourages the use of temporary special measures in order to give full effect to Articles 7 and 8’.<sup>165</sup> The Committee then suggested several mechanisms to support effective integration,

including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies<sup>166</sup>.

If achieved, these will support equality in practical terms.

The Beijing Platform for Action (BPFA)<sup>167</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>168</sup> endorsed years before UNSCR 1325, also called on state parties to increase women’s representation at all levels of decision-making through the use of quotas and the introduction of other positive measures.<sup>169</sup> Thus far, very few countries have translated these policy documents into action. The world average of women’s representation in parliament stands at 19.3%,<sup>170</sup> which is less than the 30% quota endorsed in the BPFA and CEDAW.<sup>171</sup> Indeed, very few countries have representation higher than 30%.<sup>172</sup> The adoption of quotas has, however, been useful to increasing women’s representation in some

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<sup>165</sup> CEDAW General Recommendation, No 23 on Women in Public Life (1997) A/52/38/Rev.1.

<sup>166</sup> *ibid*[15].

<sup>167</sup> Beijing Declaration and Platform for Action, 131, UN.Doc A/CONF.177/20.

<sup>168</sup> CEDAW (n 161).

<sup>169</sup> *ibid* art.8 [182]. See also General Recommendation, No 23 on Women in Public Life, UN Doc A/52/38/Rev 1 and CEDAWGR 25, art. 4 [1] on temporary special measures reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies (2004) HRI/GEN/1/Rev.7*, 282.

<sup>170</sup> See ‘the Situation of World Women as at 31st July 2011’ <<http://www.ipu.org/wmn-e/world.htm>> accessed 11 September 2011.

<sup>171</sup> CEDAW GR [16].

<sup>172</sup> Burundi, Nepal, Rwanda, and Uganda have legislated quotas.

countries, such as Costa Rica, South Africa, and Rwanda.<sup>173</sup> For example, this has been affirmed by the Gender Links research in Southern Africa.<sup>174</sup>

Despite the progress mentioned above, women still remain underrepresented in decision-making. Responding to this, feminist scholars observe that there is a need to ‘construct innovative ways’ of ‘broadening the site of negotiations’.<sup>175</sup> In Liberia, efforts to broaden women’s participation post-conflict included the development of electoral procedures, guidelines calling for 30% representation of women on political party lists, and a Code of Conduct for the elections in 2005. However, the percentage of women in the legislature remained low.<sup>176</sup> One of the reasons for this poor compliance was because no sanctions exist for non-compliance.

As noted in the Liberia Truth and Reconciliation Report:

In the 2005 elections, out of 806 candidates who were nominated for various positions, women made up only 14%. In the Senate, out of 30 seats, five went to women making up 17%. And in the House of Representatives, nine women were elected representing 12.5% of the total number of 64 representatives. Women, at that time, were ministers of five ministries – Justice, Finance, Commerce, Gender and Development, and Youth and Sports. Women constituted 31% of the Cabinet and 14 of the legislature. Women made up 10% of staff of national ministries and 5% of the bureaus and agencies.<sup>177</sup>

The report also shows that the National Elections Commission had three women (43%) and four men, while the Supreme Court had two women (40%) and three men. In the Security Sector, as of 2010, women represented 3.7% of the military, 16.5% of the National Police, and 47% of the

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<sup>173</sup> See ‘Women in National Parliaments’ (*Inter-Parliamentary Union*) <<http://www.ipu.org/wmn-e/world.htm>> accessed on 11 September 2011.

<sup>174</sup> Collen Lowe Morna, ‘Gender in Southern African Politics; Ringing up the changes’ (2004) *Gender Links* 18.

<sup>175</sup> Bell and O’Rourke (n 68) 979.

<sup>176</sup> Liberia Truth and Reconciliation Commission, ‘Women and the Conflict Report,’ vol 3, title 1, 62.

<sup>177</sup> *ibid.*

judiciary.<sup>178</sup> This no doubt is a sign of progress for women's participation,<sup>179</sup> however, the last election represented a decline in women's participation in Liberia: female representation in the Senate dropped to 13.3% and the House of Representatives to 11%.<sup>180</sup>

The CEDAW Committee was particularly concerned about the low representation of women in decision-making processes in Liberia 'and the lack of concrete steps to address the underlying causes'. It thus urged the State party to take concrete measures in line with General Recommendation 23 and 25 and also to take concrete steps towards enacting the fairness bill, emphasising that the provisions should be in line with the objectives of CEDAW.<sup>181</sup>

In Sierra Leone, on the other hand, eighteen women were elected to the parliament out of 124 seats in 2002, and in 2008, that number dropped to 16. Likewise, in the local council, women represented 56 out of 456 position in 2004, and in 2008, 86; while at the Ward level, the Local Government Act provides for 50% representation.<sup>182</sup> There are less than 5% women in the cabinet presently. Some of the challenges identified by Abdullahi et al. are that majority of Sierra Leone women are illiterate, poor, and live under discriminatory laws that continue to relegate them to the background as second class citizens.<sup>183</sup>

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<sup>178</sup> Moser (n 128) 9.

<sup>179</sup> The results of elections in Liberia in 1995, 2005, and 2009 respectively, show the following results in parliamentary seats for women: 5.7%, 5.26%, and 12.5%. There is also a Fairness Bill before the Parliament with a provision on 30% affirmative action for women.

<sup>180</sup> Presently, there are four women in the senate out of thirty seats and eight in the House of Representative out of 78 <<http://www.ipu.org/wmn-e/classif.htm>> accessed 22 September 2012.

<sup>181</sup> Liberia CEDAW CO (2009) [29].

<sup>182</sup> Clair Castillego, 'Women's Political Participation and Influence in Sierra Leone' (FRIDGE 2009) 2. See also Hussana J Abdulaih, Aisha F Ibrahim, and Jamesina King 'Women's Voices, Work and Bodily Integrity in Pre Conflict and Post Conflict Reconstruction Processes in Sierra Leone' (2010) 41.2 *Institute of Development Studies* 37-46.

<sup>183</sup> Abdulaih et al. (n 182) 40

Women's right to participate and make decisions in public life has been on the women's movement agenda from time immemorial.<sup>184</sup> The CEDAW, in particular, emphasised the need for women to participate at the International level.<sup>185</sup> As noted in the UN Secretary General Report, increasing the number of women in the UN Field Mission will ensure that 'relief and recovery efforts include women and girls'.<sup>186</sup> In 2002, there were no women in any UN peacekeeping operations in fifteen countries (though there were gender advisers – in the DRC, Bosnia and East Timor – and gender units in Kosovo and East Timor).<sup>187</sup> However, since the report of the Secretary General on the implementation of WPS 1325 in 2004, several policies have been adopted within the UN allowing for the appointment of more women within its institutions, particularly in peacekeeping operations.<sup>188</sup> For example, in August 2009, a global campaign to increase the deployment of women police and military was launched, setting a target of achieving a minimum of 20% recruitment of women by police by 2014 and 10% recruitment by the military by 2020.<sup>189</sup> African and Asian countries like Nigeria, Zambia, India, and Bangladesh have been responding to this campaign, particularly with regard to female police recruitment. This intervention led to an increase in the number of policewomen in Liberia, where the ratio increased to 20%.<sup>190</sup>

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<sup>184</sup> The first treaty put forward by the United Nation Commission on the Status of Women was the UN Convention on Political Rights of Women (1952) 193 UNTS 135, which provided for women's rights to vote and participate in public life.

<sup>185</sup> See CEDAW Article 8 and CEDAW General Recommendation No 23 [35-50].

<sup>186</sup> UN Secretary General, 'Women, Peace and Security; Study Submitted by the Secretary General Pursuant to Security Council Resolution 1325 (2011) S/2011/598, 11.

<sup>187</sup> Kaufman and Williams (n 46) 98.

<sup>188</sup> Otto (n 78) 105-106.

<sup>189</sup> St-Pierre (n 37) 41.

<sup>190</sup> *ibid* 41. See also IRIN GLOW, Gender: Women UN Peace: more women needed (2010) <<http://www.irinnews.org/report.aspx>> accessed 22 September 2012.

Similarly, as of June 2011, women headed five of the 28 peacekeeping operations, political and peace-building missions,<sup>191</sup> and were deputy heads in another five.<sup>192</sup> Furthermore, women represented 23% of senior positions in political and peace-building missions, and 24% of peacekeeping missions.<sup>193</sup>

In about ten countries where the UN Integrated Mission presently operates, there are gender advisers and gender focal points in six traditional peacekeeping missions. Women civilians involved in UN peacekeeping operations presently comprise about 30%.<sup>194</sup> The percentage of women at the highest management level of UN peacekeeping missions has increased to 14%, though women are still significantly underrepresented in the military units (2%) and in the civilian police units (6%).<sup>195</sup> While this data shows some progress at the UN, it has failed to meet the quota set by the CEDAW and BPFA as mentioned above. The failure of UNSCR 1325 to set a benchmark for women's representation at peace processes could hamper advocacy for representation and participation, because it places the obligation on engendering peace processes at the discretion of the patriarchal structures that determine who sits at the peace roundtable; these discretions are often tilted towards the exclusion of women.

In Liberia, according to a senior officer in the coordinating office UNSCR 1325, the implementation process is gradually becoming effective – a strategy was recently adopted by the government to have at least 20% of the security forces composed of women. There is also a

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<sup>191</sup> Burundi, Central African Republic, Liberia, Cyprus, and Timor-Leste. See Report of the SG 2011 (11).

<sup>192</sup> Burundi, DRC, Liberia, Iraq, and Darfur.

<sup>193</sup> Report (n 191) 11.

<sup>194</sup> St-Pierre (n 37) 4.

<sup>195</sup> Jeannette Boehme, *Literature Research on the Implementation of UN Security Council Resolution 1325 'Women, Peace, and Security'* (Werner-Institute for Feminism and Gender Democracy of the Heinrich Böll Stiftung 2011).

coordinating committee emerging on 1325 – a collaboration between the government and the CSOs – and there is much coordination going on to make NAPs more effective.<sup>196</sup>

However, despite the commitment of the two countries to 1325, women’s presence is still rare in both elective and appointive positions. The coordinator notes further that in Liberia, ‘we have learnt our lessons in the last elections and we will design a better strategy for more women’s participation in future’.<sup>197</sup>

The call for women’s increased representation and participation in decision-making challenges the male patriarchal norms;<sup>198</sup> it legitimises the formal participation of women and remains critical to enduring peace. The reality in Africa is that women are still not welcome in public places. Rehn and Sirleaf contributions have shown that it is important for women voices to be heard and decisions are made with them.<sup>199</sup> Thus, there is a need to link the participation of women in both formal and informal processes, at the local and national levels, to achieve the desired results.

Beyond representation, one of the challenges facing the peace and security missions is the lack of gender expertise to provide necessary support to field missions. An expert can support national institutions and processes in making gender-informed decisions. In this regard, special gender

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<sup>196</sup> Interview with one of the officials of the Task force on 1325 (Liberia, January 2012)

<sup>197</sup> *ibid.*

<sup>198</sup> Sylvia Tamale, *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (Fountain Publishers 1999) 10

<sup>199</sup> E. Rehn and E. Sirleaf, *Women, War and Peace* (UNIFEM 2000) 88.



advisers were recently deployed by Iceland and Sweden to several field missions; these experts train and support field missions.<sup>200</sup>

## **8. Assessment of the AU and the Women, Peace and Security Agenda**

### *a. From mainstreaming women to gender mainstreaming*

There were earlier efforts by the AU to mainstream women's issues in its work, though this commitment was more visible on issues relating to conflict, rights to participation, and development.<sup>201</sup> However, the reference to women was based on stereotypical presumptions.<sup>202</sup> The transition from the Organisation of African Unity to the African Union witnessed a clear change in the language from women to gender; for example, one of the principles set out in the African Union (AU) Constitutive Act<sup>203</sup> was commitment of the AU to gender equality.<sup>204</sup> In February 2001, the AU expressly requested the Secretary General to take appropriate measures towards adequate representation of women in AU decision-making, as well as to support mainstreaming women's effective participation in its vision, through the African Women Committee for Peace and Development (AWCPD) and the UN Economic Commission for Africa (UNECA).<sup>205</sup> Prior to that, in 1998, the OAU established the AWCPD and the UNECA to support its peace and development initiatives.<sup>206</sup> The AWCPD later became the AU Women's

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<sup>200</sup> See SG Report (2011) 11.

<sup>201</sup> See Rachel Murray, *Human Rights in Africa; From the OAU to the African Union* (Cambridge University Press 2004) 134.

<sup>202</sup> *ibid* 134.

<sup>203</sup> Organization of African Unity, *Constitutive Act of the African Union* (adopted 1 July 2000, came into force on 26 May 2001) OAU Doc. CAB/LEG/23.15. The Act replaces the Charter of the Organization of African Unity. It was subsequently amended by the Protocol on Amendment to the Constitutive Act of the African Union.

<sup>204</sup> Constitutive Act of the African Union (26 May 2001) CAB/LEG/23.15, Article 4(1).

<sup>205</sup> Decisions of the 73rd Ordinary Session of the OAU Council of Ministers on Women and Gender CM/Dec. 579 (LXXIII) 135 <[http://www.au2002.gov.za/docs/summit\\_council/tripoli.htm](http://www.au2002.gov.za/docs/summit_council/tripoli.htm)> accessed 29th August 2012.

<sup>206</sup> B. Diop, 'The AU and implementation of UNSCR 1325' in Funmi Oloinsakin et al. (eds), *Women, Peace and Security: Translating policy into practice* (Routledge 2011) 175.

Committee (AUWC), with the capacity to provide expert advice to the chairperson of the Commission and also support grassroots women's voices in discussions on peace and conflict resolution.<sup>207</sup> In pursuit of its mainstreaming agenda, the AU Council of Ministers recommended that the Secretary General should further work with the Executive Secretary of the ECA and other international organisations to convene regular meetings geared towards mainstreaming women's issues into development on the continent.<sup>208</sup> The AU has made several other commitments in this regard.<sup>209</sup> According to Murray, these approaches have paid off – for example, the Protocol on the African Court of Justice amongst others requires equal gender representation in the election of judges.<sup>210</sup>

Furthermore, in 2002, the Council of Ministers also adopted the Decision to Mainstream Gender and Women's issues in the African Union; the Council welcomed the establishment of a special unit in the office of chairperson to be responsible for activities relating to gender.<sup>211</sup> Likewise, at the Inaugural Session of the AU Assembly of Heads of State and Government in July 2002 in Durban, the AU made a commitment towards gender parity in AU organs. This was further demonstrated at the Second Ordinary Session of the Assembly in Maputo, Mozambique, in 2003 through the election of five female and five male Commissioners. In 2004,<sup>212</sup> the AU specifically adopted the Solemn Declaration on Gender Equality in Africa (SDGEA) committing to further

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<sup>207</sup> *ibid* 175.

<sup>208</sup> Decision Adopted by the Sixty- Sixth Ordinary Session of the Council of Ministers. CM/Dec.330-363 (LXVI), Dec.337 in Murray (n 201) 153. See also Lomé, Togo; Thirty-sixth Ordinary Session of the OAU Assembly of Heads of State and Government (Tripoli, Libya, February 2001), where Ministers expressed their support for gender mainstreaming during the transition from the OAU into the AU (2000). See also Seventy-third Ordinary Session of the OAU Council of Ministers Decision CM/Dec. 579 (LXXIII) on Women and Gender, which was adopted by the OAU Council of Ministers Murray (n 201).

<sup>209</sup> See also Report of Secretary General on its Activities of the General Secretariat, CM/2058(LXVIII) Part 1, Introductory Notes of the Secretary General to the Seventy-Fourth Ordinary Session of the Council of Ministers, 95-96.

<sup>210</sup> Murray (n 201) 136.

<sup>211</sup> See Article 12(3) of the Statute of the Commission.

<sup>212</sup> Solemn Declaration on Gender Equality in Africa Assembly (2004) /AU/Decl 12 (I1)Rev 1.

the protection of women's human rights, support the ratification of the Protocol on the Rights of Women, and also specifically support and ensure gender mainstreaming in the AU.<sup>213</sup> Clause 2 drew inspiration from the UN Security Council Resolution 1325 on women's roles in armed conflict and their contribution to conflict resolution. The Declaration also requested that the Secretary General report on the extent of gender mainstreaming in the AU through Clause 12, requesting that state parties provide annual reports on their implementation of SDGEA, though very few state parties have complied with this requirement.<sup>214</sup>

The AU's efforts to promote 'gender equality' have also been supported by other Sub Regional Economic Communities (RECs), including the Economic Communities for West Africa (ECOWAS),<sup>215</sup> the East African Community (EAC), and the Southern African Development Community (SADC).<sup>216</sup> For example, the Southern African Development Community Protocol on Gender and Development specifically identified with the Women, Peace and Security agenda, stating that:

*States' Parties shall endeavour to put in place measures to ensure that women have equal representation and participation in key decision-making positions in conflict resolution and peace building processes by 2015 in accordance with United Nations Security Council Resolution 1325 on Women, Peace and Security.*<sup>217</sup>

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<sup>213</sup> SDGEA [13].

<sup>214</sup> AU Monitor, 'Evaluation of the solemn declaration on gender equality' <<http://www.pambazuka.org/aumonitor/comments/2613/>> accessed 30 August 2012.

<sup>215</sup> For example, the ECOWAS adopted the Women, Peace and Security Agenda in its ECOWAS Conflict Prevention Framework (ECPF), Regulation MSC/REG.1/01/08 [81] <[http://www.ecowas.int/publications/en/framework/ECPF\\_final.pdf](http://www.ecowas.int/publications/en/framework/ECPF_final.pdf)> accessed 12 April 2011.

<sup>216</sup> For example, the SADC in August 2008 adopted a Gender and Development Protocol in Johannesburg <<http://www.sadc.int/index/browse/page/465>> accessed on the 21 September 2012.

<sup>217</sup> SADC, Gender Protocol 2008, art. 28.

In this statement, the SADC Gender and Development Protocol set a timeline for the achievement of women's equal representation in peace roundtables. While this is significant, the reality is that it is unlikely that this will be achieved.

However, there has been criticism of the rhetoric of gender mainstreaming in the context of the Women, Peace and Security agenda. This chapter argues that there are several AU initiatives that should propel the promotion of gender equality, but very little is done in this regard. For example, the African Charter on Human and People's Right commits itself to non-discrimination, through Article 18(3). In Article 2, the Charter addresses non-discrimination on the basis of sex, among others; this entitles the enjoyment of women's human rights without any form of discrimination. Article 3 emphasises the general principle of international law on equal protection before the law.

The Commission's affirmation of non-discrimination and the principle of equality are highlighted in a communication brought by *the Legal Resource Foundation v Zambia*:

[...] it means that citizens expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to all other citizens. The right to equality is important for a second reason. Equality or lack of it, affects the capacity of one to enjoy many other rights.<sup>218</sup>

Article 18 of the Charter provides for the state to ensure the elimination of every form of discrimination against women, and also to ensure the protection of the rights of the woman and

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<sup>218</sup> See *Legal Resources Foundation v. Zambia, African Commission on Human (Judgment)No. 211/98* (14 November 2000) [63].

the child as stipulated in international declarations and conventions.<sup>219</sup> By implication, then, the article incorporated the principles enshrined in the CEDAW. In analysing the provisions of the Banjul Charter regarding women's rights in the context of Article 18(3), Beyani<sup>220</sup> shows that through the Charter, state parties are under the obligation to take steps to eliminate gender discrimination. The Charter, amongst other things, covers not only civil and political rights, but also socio-economic rights, which can be more advantageous to women, particularly those coming out of conflict.

In 2003, the AU also adopted the AU Protocol on women's rights, which significantly addresses the issue of gender equality from a human rights perspective. Further, it provides for women's rights to peace,<sup>221</sup> addresses issues of women in armed conflict<sup>222</sup>, and acknowledges the rights of women to participate in the promotion and maintenance of peace. In 2009, the AU further strengthened its commitments with the adoption of the African Union Gender Policy (AUGP). The AUGP reaffirmed commitments to the provisions of Resolutions 1325 and 1820, and explicitly affirmed gender mainstreaming as a strategy, setting the year 2020 as a target for achieving these goals.<sup>223</sup>

This effort led to the development of gender training tools by the AU Gender Directorate and the Peace Support Operations to support the capacity of the police, military, and other members of

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<sup>219</sup> African Charter, art.18(3).

<sup>220</sup> Beyani Chaloka, 'Towards a more effective guarantee of women's rights in the African Human Rights System' in Rebecca Cook (ed), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press 1994) 285

<sup>221</sup> AU Women's Protocol, art. 10.

<sup>222</sup> *ibid* art. 11.

<sup>223</sup> African Union Gender Policy (10 February 2009) REV 2/.

the AU/UN Hybrid mission.<sup>224</sup> However, Koen points out that no blueprints yet exist to ensure gender equality.<sup>225</sup> A major challenge is how to translate some of these documents from policy to reality – this will be dependent on the political will of African leaders to nationalise some of the progressive gender-friendly provisions that can particularly be found in the SDGEA, the African Charter, and the AU Women’s Protocol, amongst others. This interest in bringing the rights enshrined in the legal and policy documents to national fruition is not finding much visibility in post-conflict Sierra Leone and Liberia; despite that, the AU Women’s Protocol specifically addresses issues of women in armed conflict and women’s rights to peace.<sup>226</sup> Koen further notes that this form of domestication of policies can only be effective if the AU sets up accountability or reporting mechanisms that can produce, for example, African-wide indicators on the extent of policy compliance.<sup>227</sup> This would impact performance at the state level; however, this is not yet the case.

Thus, as Pillay affirms, gender equality is yet not central to the peace and security agenda – it has been an ‘add-on’ in the broad agenda of peace and has not attracted any substantial change within a structure of the AU that is still male-dominated.<sup>228</sup> Nzomo shares this position and calls for vigilance if the aspirations in the Women, Peace and Security agenda are to be pursued.<sup>229</sup>

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<sup>224</sup> St-Pierre (n 37) 88.

<sup>225</sup> Karin Koen, ‘Reconfiguring Women’s Roles in Post Conflict Situations’ (2006) *ISI Occasional Paper* 14.

<sup>226</sup> See Article 110 and 11 of the AU Women’s Protocol 2005.

<sup>227</sup> *ibid.*

<sup>228</sup> Anu Pillay, ‘Gender Peace and Peacekeeping: Lessons from South Africa’ (2006) *ISS Paper* 3.

<sup>229</sup> M. Nzomo, ‘From OAU to AU and NEPAD: Regional Integration Processes in Africa and African Women Keynote Address, Regional Strategy Meeting on Women’s Political Participation and Gender Mainstreaming in the AU and NEPAD, Nairobi (27-31 October 2003) <<http://www.sarpn.org/documents/d0000608/page1.php>> accessed 22 September 2011. See also Pillay (n 33) 3.

Tamale also emphasises that women have been neglected in democratic discourse because of the patriarchal societies existing in Africa.<sup>230</sup>

A good example of this rhetoric is the adoption of the Protocol relating to the Establishment of the Peace and Security Council of the African Union,<sup>231</sup> a largely gender-neutral document. The Protocol was established pursuant to Article 5(2) of the Constitutive Act, a Peace and Security Council (PSC) within the Union, as a standing decision-making organ. Its objectives were preventing conflict, promoting peace and security, peace building, post-conflict reconstructions, rule of law, human rights, and democratic practices. The PSC is composed of fifteen members, with emphasis on equal rights and regional equity. For a union that is committed to gender, one would have expected that it would have also emphasised gender parity in its composition to ensure compliance.

Secondly, in the entire document, references to women appear in less than three places; for instance, with regards to training guidelines, the Protocol provides in Article 13 that the Commission shall provide guidelines for the training of the civilian and military personnel of national standby contingents on ‘International Humanitarian Law and International Human Rights Law, with particular emphasis on the rights of women and children [...]’. Furthermore, Article 14(3)(e), which specifically identifies the activities and duties of the PSC, states that it shall amongst other things ‘provide assistance to vulnerable persons, including children, the

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<sup>230</sup> S. Tamale, ‘Towards Legitimate Governance in Africa: The case of Affirmative Action and Parliamentary Politics in Uganda,’ cited in Murray (n 201) 155

<sup>231</sup> Established pursuant to Decision AHG/Dec.160 (XXXVII), adopted by the 37<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of the OAU, held in Lusaka, Zambia from 9 to 11 July 2001, during which the Assembly decided to incorporate the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution as one of the organs of the Union, in accordance with Article 5(2) of the Constitutive Act.

elderly, women and other traumatized groups in the society.’ The reference to women and children in the above speaks to their vulnerability and to a large extent shows the bias of the AU and their perception of the role of women in conflict. The fact that the Protocol on PSC did not address the issue of gender mainstreaming or gender equality contradicts the AU’s earlier commitment to gender equality, parity, and women’s human rights.

Hudson observes that the continent’s entrenched patriarchy continues to exclude women at all levels, and as such, could be responsible for the lingering conflict and inability to effectively integrate gender in its policies and promote women’s human rights.<sup>232</sup>

## **b. Participation**

The OAU has recognised the need to increase participation of women in respect of decision-making, particularly in conflict situations.<sup>233</sup> In response to this call, the AU has increased the number of women in its operations – the AU presently has a Special Representative on Women, Peace and Security appointed to create a link between the gender initiatives of the AU and the UN on WPS.<sup>234</sup> As Diop observes, the AU Gender Directorate and UNIFEM have organised missions and supported women’s participation in peace missions; for example, women were present at the Abuja Inter Sudanese Peace talks. However, these forms of interventions are not regular, few women are nominated as special envoys, and the participation of women in peace processes in Africa still remains a major challenge.<sup>235</sup>

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<sup>232</sup> Heidi Hudson, ‘Gender Peace Building and Post Conflict Reconstructions in Africa: Breaking the Chain between inequality and violence’ in Dirk Kotze and Hussein Solomon (eds), *The State of Africa Post Conflict Reconstruction and Development* (Africa Institute of South Africa 2008) 10.

<sup>233</sup> See Murray (n 201) 139.

<sup>234</sup> African Union, Peace and Security Council Briefing Notes 3 <<http://www.au.org>> accessed 3 August 2012.

<sup>235</sup> Diop (n 206) 177.



Furthermore, an overview of women's participation in the AU structures reveals that women are inadequately represented within the main policymaking mechanisms, namely the Assembly of the AU, the Executive Council and the Peace and Security Council.<sup>236</sup> As of 2009, the ratio of women to men amongst the PSC is one to fourteen, showing that the PSC is still male-dominated.<sup>237</sup> Though the composition of the AU-ECOSOC allows for equal representation of women, unfortunately ECOSOC's powers are advisory only. The Pan-African Parliament (PAP) has produced a woman head, though PAP only has a 20% quota for women and is also an advisory body. Except for the 50/50 parity in the appointment of the AU commissioner, and the 30% representation in the African Court,<sup>238</sup> AU commitment to gender parity in all of its organs remains unfulfilled. Thus, the continued failure to ensure women's participation and incorporation of their perspectives at decision levels and the operation of the AU will continue to hamper development in Africa and make gender equality unrealistic.<sup>239</sup>

As Gertrude Mongella, President of the Pan-African Parliament, notes, 'the participation of women not only provides equal opportunity on a practical level. But also offers a new perspective and diversity of contribution to policy-making and priorities for development'.<sup>240</sup>

At the sub-regional level, the Economic Community of West Africa States (ECOWAS), whose membership includes Liberia and Sierra Leone, adopted the ECOWAS Protocol on Conflict

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<sup>236</sup> *ibid* 181.

<sup>237</sup> Roselyn Musa, 'Evaluation on the implementation of the Solemn Declaration on Gender Equality in Africa, GIMAC' (2009) cited in Diop (n 206) 181. As at September 18<sup>th</sup> 2012, Justice Sophia Aduko was elected as the first female president of the African Court <<http://www.au.int/en/content/justice-sophia-b-akuffo-elected-president-african-court>> accessed 23 September 2012. Also on the 12<sup>th</sup> of July 2012, the AU elected Ms Dlamini-Zuma as the new Chairperson <<http://www.bbc.co.uk/news/world-africa-18846210>> accessed 23 September 2012

<sup>238</sup> Diop (n 206) 181

<sup>239</sup> Koen (n 225) 121.

<sup>240</sup> Association of European Parliamentarian for Africa, 'the Role of Parliament in Conflict Management and Peace building' Occasional Paper Series, No 13, 2006, cited in Bastick, (n 133) 158.

Prevention (ECOWAS mechanism),<sup>241</sup> a year before the adoption of the UNSCR 1325. Later, in 2008, ECOWAS adopted the ECOWAS Conflict Prevention Framework (ECPF) to support and strengthen human security in West Africa and further operationalise the Mechanism.<sup>242</sup> The ECOWAS mechanism in its preamble specifically requires effective women policies that can alleviate their suffering. It goes further in Article 40 to recognise and encourage the support of women in conflict prevention and peacekeeping processes. Through this article, the ECOWAS mechanism specifically encourages support for the participation of women. It established the Council of Elders (the wise),<sup>243</sup> which includes three women out of 15.<sup>244</sup> The ECOWAS Protocol did not specifically include a quota, but it has a provision supporting the protection of women and vulnerable groups during armed conflict,<sup>245</sup> promoting women's training at all levels,<sup>246</sup> guaranteeing women equal rights to education as men, and supporting the elimination of stereotyped concepts in education.<sup>247</sup> Though the ECOWAS Protocol predates the UNSCR 1325, it incorporated most of the key tenets.

The ECOWAS Conflict Prevention Framework (ECPF) has fourteen components, which include: Women, Peace and Security; early warning; preventive diplomacy; democracy; human rights; disarmament; and cross-border initiatives. The framework for WPS within the ECOWAS focuses on, amongst other things: the need to take practical steps to increase women's representation in

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<sup>241</sup> Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace Keeping and Security (ECOWAS mechanism) adopted at Lome (10 December 1999), in line with Decision A/DEC.11/10/98 (adopted 31 October 1998).

<sup>242</sup> Babatunde Tolu Afolabi, 'Peace making in the ECOWAS Region; Challenges and Prospects' (2009) *Conflict Trends* 1.

<sup>243</sup> See ECOWAS Protocol, art. 20.

<sup>244</sup> See Ceesay-Ebo (n 257) 188.

<sup>245</sup> ECOWAS Protocol 1999, Art 44.

<sup>246</sup> *ibid* art.30(4).

<sup>247</sup> *ibid* art.30(5).

senior decision-making on peace and security;<sup>248</sup> the implementation of programs to support the leadership capacity of women to adequately function in dispute resolution and peace-building;<sup>249</sup> regional policy to combat gender-based violence and discrimination against women in all its forms;<sup>250</sup> the strengthening of legislative and judiciary measures, awareness and training on GBV in Member States; and the adoption of affirmative action in other areas of low participation, like education.<sup>251</sup> The express inclusion of WPS in the framework signalled the recognition of women's peace and security issues in the sub-region and the need to give WPS the priority it deserves. However, this is not so in reality. As Ekpe observes, the ECOWAS Conflict Prevention Framework (ECPF)/WPS failed to adequately mainstream gender in all its components; rather, it focused on 'soft areas' like early warning, preventive diplomacy, democracy, political governance and human rights, leaving 'hard areas' like disarmament and security governance without a role or reference to women.<sup>252</sup> She further criticised the language of the framework for 'victimizing' women and presenting them as 'soft, peace-loving, victims, helpful, and peacemakers'.<sup>253</sup>

Also at the ECOWAS level, member states adopted the Democracy and Good Governance Supplementary to the ECOWAS Protocol.<sup>254</sup> The Good Governance Protocol provided for women to participate equally in governance and in policy implementation.<sup>255</sup> It also specifically

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<sup>248</sup> ECOWAS Conflict Prevention Framework (ECPF), Clause 82 (2008).

<sup>249</sup> *ibid* cl 82 (c-b) (2008).

<sup>250</sup> *ibid* cl 82(d-e) (2008).

<sup>251</sup> *ibid* cl 82(f) (2008).

<sup>252</sup> E. Ikpe, 'ECOWAS, Women and Security' in F. Olonisakin and A. Okech, (eds), *Women and Security Governance in Africa* (Pambazuka Press, 2011) 138.

<sup>253</sup> *ibid* 138.

<sup>254</sup> Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for the Conflict Prevention, Management Resolution Peacekeeping and Security (Good Governance Protocol) (adopted 21 December 2001) A/SP1/12/01

<sup>255</sup> *ibid* art. 2(3).

called for the participation of women in election monitoring and observation processes, though no quota was stipulated.<sup>256</sup> As Ceesay-Ebo notes, there appeared to be a marked gap between the normative provisions and actual implementation.<sup>257</sup> For example, no woman has emerged as the Chair of the ECOWAS Commission since its inception.<sup>258</sup>

The level of women's participation in ECOWAS is poor; women are marginalised in all the peace processes. This is evident in the accounts from Cote D'Ivoire, Togo, Liberia, Sierra Leone, and other warring parts of West Africa.<sup>259</sup> The present structure of the ECOWAS Commission and the peace and security architecture has not shown any form of increased leadership roles for women. Very few women are in senior management positions – two out of the seven Commissioners are women; however, while one holds administrative and support positions and the other is assigned to gender, these are not core policy-making positions.<sup>260</sup> With such laudable frameworks and instruments within ECOWAS, the exclusion of women in peace processes and the DDR processes in Sierra Leone and Liberia show that the norms are not translating into practice. The reality in West Africa is that women are still excluded from participating in decision-making. The regional and sub-regional organisations have a responsibility to show positive commitments to these norms, in order to positively impact on the State parties in the region. Such leadership is still lacking.

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<sup>256</sup> art. 14.

<sup>257</sup> A. Ceesay-Ebo, 'Gender Dimension of ECOWAS Peace and Security Architecture- A regional perspective on UNSCR1325' in Funmi Oloinisakin (ed), *Women, Peace and Security: Translating Policy into Practice* (OUP 2011) 188.

<sup>258</sup> *ibid* 188.

<sup>259</sup> See Women in Peace building Programme (WIPNET) Report of Proceedings at the 6th Regional Conference of Women in Peace building Grand Bassam, Cote d'Ivoire, 20th to 21st July 2010 <<http://www.wanep.org>> accessed 17 August 2011.

<sup>260</sup> Ikpe (n 252) 139.

*c. Protection*

The fact that Africa still records high incidences of conflict, and women still continue to suffer numerous forms of gender-based violence, shows the lack of genuine commitment and political will by the African states to promote gender equality and support protection of women. A strong framework and enforcement mechanisms are important to support protection and accountability for gender-based violence. SDGEA extensively prohibits exploitation and any form of gender-based violence against women during both peace and wartime.<sup>261</sup> The Protocol to the Rights of Women in Africa provides an effective legal framework to support other mechanisms created by the AU. As Banda points out, the Women's Protocol provides a framework for accountability, comprehensively covering the diverse nature of violence affecting women and girls during peace and war periods. It therefore follows the Declaration on the Elimination of Violence against Women (DEVAW),<sup>262</sup> linking the issues of violence against women in Africa with existing human rights frameworks.<sup>263</sup>

The AU Protocol addresses violence against women,<sup>264</sup> and its definition of violence covers all the spheres in which women experience violence,<sup>265</sup> namely the family, the community, and at the hands of the state. Its breadth of coverage is reinforced by the requirement in Article 3(4) on dignity. Article 4 of the Protocol obliges the state to take adequate steps to compel legislation on the issues of violence against women, promote peace education, and punish perpetrators. Interestingly, the African Charter is one of the few international instruments that does not allow

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<sup>261</sup> Assembly of Heads of State and Government of the [African Union](#) Third Ordinary Session, [Addis Ababa](#), Ethiopia (6-8 July 2004) Assembly/AU/Decl. 12 (111) Rev. 1.

<sup>262</sup> Declaration on the Elimination of Violence against Women General Assembly (20 December 1993) Resolution 48/104.

<sup>263</sup> Fareda Banda, *Women, Law and Human Rights: An African Perspective* (Hart Publishing 2005) 165.

<sup>264</sup> Protocol to the African Charter, art.4(2).

<sup>265</sup> *ibid* art. 1(j)

for derogation in time of peace or war;<sup>266</sup> the implication of this is that States are under obligation to protect their citizens. Thus, the flashes of conflict and full-blown war occurring in Africa contradict the tenets of the African Charter.

Understanding and affirming accountability on violence against women or gender-based violence is critical to Africa, as the continent has suffered more conflict in recent times than any other. Worse still, as Hussein points out, Africa is unfortunately noted for the ‘return conflict’ syndrome, even when peace agreements have been signed.<sup>267</sup> The syndrome largely attests to employing the wrong approaches to resolve conflicts in Africa and the impunity that pervades the continent.

The current situations in Darfur, East Congo, and other African countries show that the African Peace and Security system has failed to guarantee adequate protection against sexualised violence. The recent rape of over 235 women, 52 girls, 13 men, and 3 boys in North Kivu, DRC, in December 2010 affirms this position. The violation took place over a period of four days; however, the UN Stabilization Mission (MONUSCO) and the DRC government failed to offer the necessary protection to avert the incident.<sup>268</sup>

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<sup>266</sup> Rachel Murray ‘*The African Commission on Human and Peoples’ Rights and International Law*’ (Hart Publishing 2000) 3.

<sup>267</sup> Hussein Solomon, ‘The Importance of Post Conflict Reconstruction in Breaking the Cycle of ‘Return Conflict’ in Drik Kotze et al. (eds), *The State of Africa; Post Conflict Reconstruction and Development* (Africa Institute of South Africa 2008) 1.

<sup>268</sup> ‘Thousands of Congolese flee from renewed fighting’ (*World News*, 30 July 2011) <[http://article.wn.com/view/2012/07/25/Thousands\\_of\\_Congolese\\_Civilians\\_Flee\\_from\\_Renewed\\_Fighting/](http://article.wn.com/view/2012/07/25/Thousands_of_Congolese_Civilians_Flee_from_Renewed_Fighting/)> accessed 10 September 2012.

The effect of armed conflict in Africa is deleterious and needs a strong legal and institutional framework to hold the perpetrators to account. The broad scope of the AU Protocol provides a framework for African countries to address the continued gender-based violence that women face in peace and wartime.

Furthermore, the AU Protocol has not yet received full acceptance in national legislation. Very few countries have legislation on gender parity, and very few encourage legislations or policies on gender mainstreaming or gender balance. Sierra Leone and Liberia are members of the African Union, and as such, are bound to bring the aspirations of the principles as enshrined in the African Charter and the AU Protocol into national legislation. Article 1 of the Charter reads: *'Parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.'* The role of the state towards implementing the Charter has been emphasised by the African Commission on Human and Peoples' Rights in the case of *the Civil Liberties Organization v. Nigeria*.<sup>269</sup>

## **Conclusion**

UNSCR 1325 has brought considerable attention to the issues of peace building and the need to integrate women in post-conflict processes. More importantly, it has contributed to the discourse of transforming women from passive characters to leading actors. However, the extent to which the framework has supported gender justice for women remains a matter of some dispute.

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<sup>269</sup>*Civil Liberties Organization v. Nigeria* (Judgement) African Commission on Human and Peoples' Rights, Comm. No. 129/94 (1995).

The impact of gender mainstreaming is still unknown. At the international level, where there is an increase in the number of women in decision-making positions, the process remains flawed, and has failed to address other structural issues such as capacity, funds and other factors that continue to limit women's opportunities to mainstream gender at that level.

Furthermore, the thesis contends that even within the domestic context, challenges to mainstreaming gender issues in peace processes persist, despite the efforts of women agencies and their contributions to peace negotiations. In both countries, the representation of women in peace processes remains abysmal, and peace agreements only marginally address gender issues. The DDR and DDRR processes show poor integration of women, and this chapter's analysis demonstrates that it cannot guarantee gender justice for women in post-conflict circumstances. One emerging issue is whether the DDR(R) has the capacity to actually respond to women's concerns post-conflict. This appears unlikely as the process was short term, *ad hoc* and does not have the potential of transformation of the lives of anyone or the women in particular on a long term basis.

This chapter reveals that post-conflict interventions in both countries are limited by lack of coordination, capacity and political will. Furthermore, at the regional level, while there is formal acknowledgement of gender equality, in reality the gains are at best insignificant. The thesis argues that a more holistic perspective is needed in responding to gender justice post-conflict. It further contests the commitment of the State to gender equality in practical terms, finding this and other reasons responsible for the continued exclusion of women's needs. Male-dominated



structures continue to subjugate women, thus attempts at mainstreaming gender issues without addressing the existing structural imbalances remain ‘*simply that: rhetoric*’.<sup>270</sup>

The next chapter will look at developments in state laws and institutions post-conflict and their effect on gender justice.

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<sup>270</sup> Vanessa Kent and Angela McIntyre, ‘From Protection to Empowerment: Civilians as Stakeholders in the Democratic Republic of the Congo’ (February 2004) *ISS Paper* 84.

## Chapter Four: Women on the Frontline – Gender Justice and the Legal Status of women in Post-Conflict Sierra Leone and Liberia

*'At Christmas time, I decided to spend it in the village of Konia since that was my husband's home. About morning time, the RUF attacked the village; I escaped, but they killed several people... An old blind woman was given cassava to eat; they (RUF rebels) caught her and beat her to death... Mariama Kalilu was a pregnant woman... When they met her in the room, they split her stomach open and abandoned her until she completely decomposed. They also caught one of my daughters who was a scholar and sexed her to death as she kept screaming until she was dead... Another suckling mother was shot dead and her baby kept playing with her remains for four days and by the time elders could decide to come back for the baby, she too was now dead. They were not buried but left for birds to help themselves...'*<sup>1</sup>

### 1. Introduction

Sierra Leone and Liberia have a shared history of decade-long civil wars<sup>2</sup> known internationally for their atrocities. During the wars, the violence against women and discrimination that existed beforehand was aggravated;<sup>3</sup> women were reported to suffer several forms of sexual and non-sexual violence.<sup>4</sup>

This chapter examines the situation of women before the war that could have propelled this form of gender-based violence. It also assesses the developments that have taken place since the war ended to support the realisation of women's human rights and reduce their vulnerability post-

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<sup>1</sup> Theresa Blackie, *Truth and Reconciliation Commission Reports 2004*, vol. 3A (16 December 2002) 137 (statement by Bo Kakua).

<sup>2</sup> International Crisis Group (ICG), 'Liberia and Sierra Leone: Rebuilding a Failed State' (December 2004) 87 *Africa Report* 8; see also Gbere Lansana, *The Dirty War in West Africa: The RUF and the destruction of Sierra Leone* (Hurst 2005); Renal Scott, 'Moving from impunity to accountability in postwar Liberia: Possibilities, Cautions and Challenges' (2005) 33:3 *The International Journal of legal Information*.

<sup>3</sup> Republic of Liberia, 'Truth and Reconciliation Commission, Consolidated Final Report', Volume 11 (2009) (hereinafter called 'the LTRC Report') <<http://trcofliberia.org/reports/final-report>> accessed 28 November 2009. See also Witness to Truth, Report of Sierra Leone Truth and Reconciliation Commission, Volume 3B (2004) (hereinafter called 'SLTRC Report 3B') <<http://www.sierra-leone.org/Other-Conflict/TRCVolume3B.pdf>> accessed 28 September 2008.

<sup>4</sup> *ibid.*

conflict. The chapter is divided into four sections: the first looks at Sierra Leone's legal history, and women's situation and legal status before, during, and after the war; the second examines Liberia from the same point of view; the third looks at gender-based violence during the war and specifically examines the laws dealing with sexual violence and rape in the two countries; and the last looks at post-conflict reconstruction processes and the operationalisation of the UN Women Peace and Security Agenda on the protection of women's human rights. This chapter intends to lay a foundation by examining the extent to which international human rights norms have been received in the two countries, how post-conflict efforts have provided opportunities to transform the legal, political, and socio-economic landscape, and how a gender justice framework has been applied to transform laws and institutions. The two countries are committed to the implementation of the Women, Peace and Security Agenda of the UN. Their post-war context provides the foundation to assess the extent with which this global peace framework finds expression at the domestic level.

The two states have also ratified relevant international treaties, particularly the Convention on the Elimination of All forms of Discrimination (CEDAW),<sup>5</sup> which requires state parties to pursue by all 'appropriate means and without delay a policy of eliminating discrimination against women'.<sup>6</sup> This chapter contends that States parties are thus bound to ensure that all the rights

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<sup>5</sup> See the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force on 3 September 1981) G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp, U.N. Doc. A/34/46. Sierra Leone signed on 21 September 1988 and ratified on 11 November 1988, and signed the Optional Protocol the Convention on the Elimination of all forms of Discrimination Against Women (adopted by UN General Assembly in October 1999, opened for signatures in December 1999) A/RES/54/4 on 8 September 2000. Liberia ratified CEDAW on 17 of July 1984 and signed the Optional Protocol on 22 September 2004.

<sup>6</sup> See generally Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Article 3 refers to appropriate measures that States parties are expected to take in "all fields" to ensure the full development and advancement of women.

enshrined in the Convention are fully expressed at the domestic level.<sup>7</sup> The two states are also bound by the African Charter on Human and People's Rights<sup>8</sup> and the Protocol on Women's Rights in Africa,<sup>9</sup> amongst others, which expressly provide for protection of citizens in both war and peace time.<sup>10</sup> Furthermore, the states have adopted the United Nations Security Council Resolutions on Women, Peace and Security,<sup>11</sup> and their post-conflict contexts necessitate the integration of the principles in the resolutions. This chapter will look at how the two countries have fared in this regard, analysing how post-conflict reformulations can support gender justice for women

## 2. Women's Legal Status in Sierra Leone, Pre and Post War

Sorensen notes that as a critical component of post conflict reformulation processes, many countries revise their constitutions to reflect new political realities and, most importantly, to comply with international norms.<sup>12</sup> Despite the return to relative peace in Sierra Leone, efforts to

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<sup>7</sup> General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (19 October 2010) CEDAW/C/2010/47/GC.2. Article 2 of the CEDAW is critical to the full implementation of gender equality provisions and the full realization of the Convention. As noted in the CEDAW Committee general comment on core obligations of the State, this provision represents the 'nature of the general legal obligations of States parties' and 'are inextricably linked with all other substantive provisions of the Convention'.

<sup>8</sup> African Charter on Human and People's Rights (adopted 27 June 1981, entered into force 21 October 1982) OAU Doc.CAB/LEG/67/3 rev.5, 21 I.L.M 58 (hereinafter called the Banjul Charter).

<sup>9</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (11 July 2003) CAB/LEG/66.6. See in particular art.10 and 11.

<sup>10</sup> R Muray, *Human Rights in Africa; From the OAU to the African Union* (Cambridge University Press 2000) 117, where it is argued that unlike other human rights instruments, the Banjul Charter does not allow for states derogation from their obligations, even in times of armed conflict or emergency. See also *Commission Nationale des Droits de l'Homme et des Libertes v Chad* (Judgment) Com No 74/92. (1995).

<sup>11</sup> United Nation Security Council Resolution 1325 (2000) (Council at its 4213th meeting, on 31 October 2000). United Nations Security Council (adopted 19 June 2008) Res. S/1820/2008. United Nations Security Council (30 September 2009) Res. S/1888/2009. United Nations Security Council (adopted 5 October 2009) Res. S/1889/2009. United Nations Security Council (adopted 16 December 2010) Res. S/1960/2010.

<sup>12</sup> B. Sorensen, 'Women Post Conflict Reconstruction Issues and Sources, *Occasional Paper 3 UNRISD, Geneva* in Tsjearad Bouta, George Frerks, and Ian Bannan (eds), *Gender, Conflict and Development* (The World Bank 2005) 81.

reform the constitution still remain a challenge.<sup>13</sup> The constitution defines the laws of Sierra Leone as consisting of the Constitution, laws made by Parliament, statutory instruments, and the common law.<sup>14</sup> The ‘common law of Sierra Leone’ is defined as the rules of law generally known as ‘the doctrines of equity, and the rules of Customary Law including those determined by the Superior Court of Judicature’;<sup>15</sup> ‘Customary Law’ means the rules of law that by custom are applicable to particular communities in Sierra Leone.<sup>16</sup> It further defines ‘existing law’ as the written and unwritten laws of Sierra Leone as they existed immediately before the Constitution came into force, and any statutory instrument issued or made before that date which came into force on or after that date.<sup>17</sup>

### **3. Discrimination against Women in Sierra Leone’s laws**

#### *a. Constitution*

Equality between men and women is one of the guarantees in the fundamental principles of state policy under the Constitution of Sierra Leone.<sup>18</sup> Chapter 11 of Sierra Leone’s 1991 constitution also provides fundamental objectives of state policies guaranteeing social and economic privileges for men and women without any form of discrimination. These are particularly important to women and can provide accountability and gender justice if enforceable for women

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<sup>13</sup> See the Sierra Leone CEDAW Report 23-24.

<sup>14</sup> Constitution of Sierra Leone 1991, s 170 (1).

<sup>15</sup> *ibid* s 170 (2).

<sup>16</sup> *ibid* s 170 (3).

<sup>17</sup> *ibid* s 170 (4).

<sup>18</sup> See generally Chapter 11 of the Constitution.

coming out of conflict. However, the lofty provisions on socio-economic rights in Chapter 11 are not enforceable in court.<sup>19</sup>

The Constitution also guarantees fundamental human rights through a provision in the Bill of Rights guaranteeing rights to the following: life and liberty, security of person, the enjoyment of property, and the protection of the law; freedom of conscience, of expression, of assembly, and of association; respect for private and family life; and protection from deprivation of property without compensation.<sup>20</sup> The Constitution further expressly protects women against any form of discrimination, stating, ‘no law shall contain any provision that is discriminatory, either of itself or by its effect.’<sup>21</sup> However, the Constitution made an exception to the prohibition of discriminatory laws with respect to laws dealing with marriage, divorce, inheritance, or other interests of personal law.<sup>22</sup> Women are mostly affected by personal law, thus the proviso made the guarantee of equal rights in the Bill of Rights redundant and of little effect to women, whose daily lives are regulated by these personal laws. The Constitution further prohibits discriminatory treatment by any person acting by virtue of any law or in the performance of the functions of any public authority.<sup>23</sup> This provision only prohibits discrimination by persons in the public sector, thus providing justification for women’s rights to be abused in the private sphere.

Section 27(3) defines ‘discriminatory’ as:

affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, color or creed, whereby persons of one such description are subjected to

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<sup>19</sup> SLTRC Report vol 3B, chp 3, 109.

<sup>20</sup> *ibid.* See generally s 15 of the Constitution (1991).

<sup>21</sup> *ibid* section 27(1); while subsections (4), (5), (6), (7) and (8) provide for circumstances under which the Constitution can discriminate both in law and practice.

<sup>22</sup> *ibid* s 27(4)(d).

<sup>23</sup> *ibid* s 27(2).

disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

The Constitution of Sierra Leone, given the above, follows a strong cultural relativist model, which allows Customary Law to exist unfettered by consideration of non-discrimination or equality before the law's provisions.<sup>24</sup> This Constitution is similar to that of Zimbabwe;<sup>25</sup> it recognises customary law to be at par with general law, and as such 'ring fences customary law from non-discrimination provisions'.<sup>26</sup>

Despite the affirmation of equality before the law in the Constitution and its commitment to the promotion of human rights and non-discrimination, throughout the history of Sierra Leone, including the post-independence period, women have not enjoyed equal status with men. Most of the laws of the land are discriminatory against women. Examples of obvious discrimination against women include the Citizen's Act of 1973, which allows a Sierra Leonean husband to confer Sierra Leonean citizenship on his foreign wife, children, and grandchildren, but does not permit a Sierra Leonean wife to do likewise.<sup>27</sup> At the 38<sup>th</sup> session of the Committee on the

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<sup>24</sup> Fareda Banda, *Women. Law and Human Rights: An African Perspective* (Hart Publishing 2005) 34.

<sup>25</sup> The Constitution of Sierra Leone is similar to that of Zimbabwe Constitution, which recognises Customary Law in the same manner, see Article 23(3): 'Nothing contained in any law shall be held to be in contravention of subsection (1)(a) to the extent that the law in question relates to any of the following matters:  
(a) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;  
(b) the application of African Customary Law in any case involving Africans or an African and one or more persons who are not Africans where such persons have consented to the application of African Customary Law.'

<sup>26</sup> Fareda (n 24) 36.

<sup>27</sup> Rawwida Baksh-Sooden and Linda Etracht (eds), 'Report of the National Consultation Freetown, Sierra Leone, 21-24 May 2001' (2002) *Commonwealth Secretariat* 57. This type of patriarchal provision is common in Africa. See also s 26 (2) of the Nigerian Constitution 1999. See also the case of *Unity Dow v. Attorney-General (Botswana)* (June 1991) cited in (1992) 36.1 *Journal of African Law* 91-92. The Plaintiff, a citizen of Botswana, was married to a non-citizen and the children were denied citizenship of her country under the provision of citizenship in the Botswana Citizenship Act 1984, which provided that citizenship can be conferred on a child born in Botswana only if 'a) his father was a citizen of Botswana; or b) in the case of a person born out-of-wedlock, his mother was a citizen of Botswana'. The court held that her right not to be subjected to degrading treatment and the right to liberty had been infringed upon, and also her right as a women to have free choice to marry a non-citizen had been violated.

Convention of Elimination of Discrimination Against Women, (the CEDAW Committee), the Government of Sierra Leone report affirmed the existence of discrimination in the Constitution.

However, it noted that its review process:

[...] is long and cumbersome, time consuming and extremely expensive. It also requires approval of not less than fifty per cent (50%) participation of registered voters and 2/3 of valid votes cast. The time, resources and political activism required to undertake such a referendum on discrimination against women is daunting.<sup>28</sup>

The Constitution may thus present obstacles that could affect the possibility of reform in the near future. In expressing concerns over the human rights situation of women and the implications of the Constitution's negative provisions,<sup>29</sup> the CEDAW Committee also called on the government to take all appropriate measures to immediately repeal all laws that militate against the enjoyment of women's rights, in particular provision (27(4)(d), which discriminates against women. It also asked governments to ensure that the rights of women are guaranteed in line with related international instruments.<sup>30</sup>

In Sierra Leone, the Constitution<sup>31</sup> guarantees every citizen above the age of eighteen the right to vote and be voted for; furthermore Section 95 (2c) of the Local Government Act 2004 provides for a statutory 50/50 gender balance affirmative policy within every District of the Ward Development Committees. While this presents opportunities for women at that level, several obstacles still exist, inhibiting women's overall participation. For example, one of the important

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<sup>28</sup> Sierra Leone: Committee on the Elimination of Discrimination against Women, consideration of reports submitted by States parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined initial, second, third, fourth and fifth periodic reports of States parties (14 December 2006) CEDAW/C/SLE/5 [8.7] 24. Hereinafter Sierra Leone Report to CEDAW.

<sup>29</sup> Concluding Comments of the Committee on the Elimination of All forms of Discrimination against Women, Sierra Leone Report (11 June 2007) CEDAW/SLE/C0/5 [12] 3.

<sup>30</sup> *ibid* [13].

<sup>31</sup> Section 31 of the 1991 Constitution.



and strategic positions at the grass root level is the paramount Chieftaincy position, which is not associated with political parties and which women have continued to be excluded from.

New constitutions are no doubt critical tools for post-conflict reformulations. As Koen notes, ‘the failure to promote a culture of constitutionalism and respect for the rule of law has implications for entrenchment of women’s rights to equality and justice’.<sup>32</sup> Some post-war constitutions have positively impacted on women’s human rights – for example, the explicit guiding principle of the Uganda Constitution of 1995<sup>33</sup> was that gender balance and fair representation would inform its implementation and all other policies that the government put in place.<sup>34</sup> The Ugandan Constitution went further, adopting temporary measures in line with CEDAW provisions<sup>35</sup> to speed up the achievement of equality. It further stated that the provisions in this regard could not be perceived as discriminatory.<sup>36</sup> The provision of the Constitution has increased the number of women in parliament since 1995.<sup>37</sup> Another example is Rwanda: its Constitution incorporates gender equality, CEDAW provisions, and a 35%

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<sup>32</sup> Karin Koen, ‘Claiming space reconfiguring women’s roles in post conflict situations’ (Occasional Paper) 121 *Institute of Security Studies Institute for Security Studies* <<http://www.iss.co.za/pubs/papers/121/Paper121>> accessed 27 August 2012.

<sup>33</sup> Constitution of the Republic of Uganda 1995 (22 September 1995).

<sup>34</sup> *ibid* Section VI. Gender Balance and Fair Representation of Marginalised Groups: ‘The State shall ensure gender balance and fair representation of marginalised groups on all constitutional and other bodies’.

<sup>35</sup> Art 33 of the Constitution Rights of Women: ‘(1) Women shall be accorded full and equal dignity of the person with men. (2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement. (3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society. (4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities. (5) Without prejudice to article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom. (6) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution’.

<sup>36</sup> *ibid*. See generally S 32(1).

<sup>37</sup> Presently the percentage of women in Parliament is 34.97% <<http://www.ipu.org/parline/reports/2329.htm>> accessed 25 August 2012.

affirmative action provision.<sup>38</sup> Eritrea's Constitution guarantees women's rights to land and women's basic human rights, amongst others.<sup>39</sup> It also addresses harmful traditional practices,<sup>40</sup> women's maternity leave,<sup>41</sup> and other women's personal laws, making dowry and bride wealth illegal.

#### *b. Customary Law*

As noted, Customary Law is the system of law used mostly by the population at large. Under Customary Law in Sierra Leone, there is no express legal minimum age of marriage as long as the requisite consent is obtained; a person can marry at any age.<sup>42</sup> The capacity to marry is also determined by the individual's physical development and his or her ability to consummate the marriage. The implication of this is that a child that is not of age or his or her parents can hide under this law, as long as consent is sought to marry. One of the violations that occurred during the war in Sierra Leone was the abuse and abduction of young girls by rebel forces for 'marriage'.<sup>43</sup> Evidence shows that the majority of bush wives were young girls between the ages of 9 and 19.<sup>44</sup> Thus, there are existing presumptions that certain marriage practices condoned in

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<sup>38</sup> The Preamble of the Constitution of the Republic of Rwanda (2003) recognises international human rights and, in particular, CEDAW, and in Title One, under its Fundamental Principles, Chapter 11 Article 9 (4) states: 'building a state governed by the rule of law, a pluralistic democratic government, equality of all Rwandans and between women and men reflected by ensuring that women are granted at least thirty per cent of posts in decision making organs'.

<sup>39</sup> Article 35(1) of the Ethiopia Constitution: '[w]omen shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men'.

<sup>40</sup> Article 35(4) Ethiopia Constitution '[t]he State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited'.

<sup>41</sup> Article 35(2) guarantees equal rights with respect to marriage.

<sup>42</sup> Valerie Nichole, 'Promoting Gender Equality Through Legal Reforms' in Baksh-Sooden and Etracht (n 27) 61.

<sup>43</sup> Karine Belair, 'Unearthing the Customary Law Foundation of Forced Marriages during Sierra Leone's Civil War: The Possible impact of International Criminal Law on customary marriage and Women's Rights in Post Conflict Sierra Leone' (2006) 15.587 *Colum. J. Gender and L.* 551-601. See also Augustine J Park, 'Inhumane acts: Forced marriage, girls soldiers and the Special Court of Sierra Leone' (2006) 15:3 *Social and Legal Studies* 315-337.

<sup>44</sup> Susan McKay and Dyan Mazurana, *Where Are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War*. (International Centre for Human Rights and Democratic Development 2004) 93.

Customary Law before the war – like marrying off young girls off with parents’ consent – could have been responsible for this form of abuse suffered by girls during the war.<sup>45</sup>

The impunity with which early marriage thrived no doubt contributed to the high prevalence of sexual violence against girls during the civil war; for example, out of the 15 girls (now adults) interviewed in the course of the field work for this thesis, nine of them were bush wives and were sexually assaulted by their abductors. Below is the ordeal of one female who was an underage victim during the war:

*I was fifteen when the rebels came into our house in Kono; they met me and my two elder sisters, they requested that the commando particularly wanted me to join him as a wife, I resisted but my sister appealed to me to go with them because of fear of being killed. They left with me and took me to the RUF camp close to Conakry around Kombi; there I served the commando, he beat me when I resisted and he forced me and raped me for the period I was with him until one night, when I escaped...*<sup>46</sup>

In 2008, the Special Court of Sierra Leone convicted three leaders of the Revolutionary United Front of forced marriage as an inhumane act constituting a crime against humanity (along with other crimes).<sup>47</sup> Several attempts have been made to address the problem of child marriage globally.<sup>48</sup> Sierra Leone ratified the UN Convention on the Rights of the Child in 1990, along with the Protocol to the African Charter on the Rights and Welfare of the Child, with both

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<sup>45</sup> *ibid* 93; Belair (n 43) 581.

<sup>46</sup> Interview with MJ (pseudonym) (Amnesty International Secretariat, Sierra Leone, April 2010).

<sup>47</sup> *Prosecutor v Sesay, Kallon and Gbao* (Judgment) SCSL-04-15-T (25 February 2009).

<sup>48</sup> See generally UN Convention on Consent to Marriage, Minimum age of Marriage and Registration of Marriages (1962); see also General Assembly Resolution Adopting the Recommendation on Marriage, Minimum age of Marriage and Registration of Marriages (1 November 1965) A/RES/2018 XX Principle 11, reproduced in the United Nations and Advancement of Women 1945-1996 (United Nations 1996) 173-174. See also CEDAW Article 16(2) and CEDAW General Recommendation No 21, ‘Equality in marriage and family relations’ [36], [38], [39].

stipulating the maximum age of a child as eighteen.<sup>49</sup> Both the Protocol of the Charter on the Rights of Women in Africa<sup>50</sup> and the African Charter on the Rights and Welfare of the Child 1990<sup>51</sup> prohibit early marriage, and both specify eighteen as the legal marriage age. In Ghana, for example, where 80% of the population marries under Customary Law,<sup>52</sup> there exists an express provision on the minimum age of marriage, which is eighteen.<sup>53</sup> As Banda observes, it is difficult to enforce laws relating to the minimum marriage age, because very few people register their marriages.<sup>54</sup>

Under Customary Law, women also do not enjoy absolute guardianship of children, nor does marriage confer any proprietary rights on them in divorce. Rather, the woman is seen as the chattel of her husband and she can be divorced as he wishes.<sup>55</sup> Under Customary Law, a man's consent is sought in marriage, while a woman's is subject to her father's. Customary Law treats a woman as a minor who cannot make such decisions on her own; she is perceived to be under the guardianship of her father, her father's brother, or any other male in her family.<sup>56</sup> A woman is also expected to return the bride wealth paid to her by the husband if she initiates a divorce.<sup>57</sup>

This demonstrates the situation of women under Customary Law and why women were vulnerable during the war: prior to the war, women were powerless and subject to their husbands

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<sup>49</sup> Article 1 of the UN Convention on the Rights of the Child (adopted and opened for signature, ratification and accession 20 November 1989, entered into force 2 September 1990) by General Assembly resolution 44/25. See also African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (adopted 1990, entered into force 29 November 1999), art 21.

<sup>50</sup> Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2003.

<sup>51</sup> African Charter on the Rights and Welfare of the Child (n 49).

<sup>52</sup> A. Kuenyehia and E. Ofei-Abogyee, 'Family law in Ghana and its implication for women' in Fareda Banda (ed), *Women, Law and Human Rights: An African Perspective* (Hart Publishing 2005) 99.

<sup>53</sup> Ghana, The Children's Act 1998 (Act 56, 1998) s 14(2).

<sup>54</sup> Banda (n 52) 98.

<sup>55</sup> Joko Smart, *Sierra Leone Customary Family Law* (Fourth Bay College Bookshop Limited 1983) 98.

<sup>56</sup> *ibid* 98.

<sup>57</sup> *ibid* 79.

or other males in their family. They were perceived as weaker than men under the existing patriarchal structures. This led to most of the violations suffered by women during the war, because such violations were seen as normal.

Under Customary Law in Sierra Leone, the eldest surviving brother of the deceased administers his estate. The main beneficiaries are the sons, brothers, and uncles, though if the wife of the deceased was to marry one of the deceased brothers and he inherits the whole or part of the estates, she can benefit from her late husband indirectly.<sup>58</sup> This is important to post-conflict reconstruction, because many women were widowed by the war and have been struggling to survive due to existing Customary Law practices. A recent post-war data compilation released by the National Statistical Office of Sierra Leone showed that 34.1% of girls aged 15-19 were married, divorced, or widowed.<sup>59</sup>

Another clear discrimination in Customary Law concerns a woman, who has not undergone any recognised form of marriage, but who lived with the deceased until death; such women are not entitled to any share of his property, nor are their children.<sup>60</sup> This creates further challenges for women who lived with their rebel husband until his death, who may not be entitled to any form of support because they were not properly married as recognised under Customary Law. The war has no doubt changed the status of women – in its aftermath, a majority of women have become head of household, with recent statistics showing that women head 22.4% of households.<sup>61</sup>

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<sup>58</sup> While most parts of Sierra Leone are patrilineal, the traditional Sherbro community is matrilineal, in which case it is the children of the deceased or sisters who inherit.

<sup>59</sup> Statistics Sierra Leone (SSL) and ICF Macro (2009), Sierra Leone Demographic and Health Survey (Calverton, Maryland, USA 2008) 86 <<http://www.measuredhs.com/pubs/pdf/FR225/FR225.pdf>> accessed 10 July 2012.

<sup>60</sup> Under the Administration of Estate Act, Cap 45, the child and the mother could petition on equitable or moral grounds to secure a share in the estate.

<sup>61</sup> See DHS (n 59) 86.

Under Customary Law, ownership of the communal and family land holdings is determined by the lineage of the community – and yet the land is in the control of men, despite community ownership.<sup>62</sup> Post-war female-headed households under these circumstances are open to further discrimination because of the challenge of accessing lands to feed themselves and their children.

Women also suffer discrimination under Muslim Law, where polygamy is condoned and a man has the right to marry more than one wife. Though there is no legal minimum marriage age, both the man and wife are expected to have reached the ‘proper age’, which is not defined.<sup>63</sup> The AU Protocol provides for equal rights of men and women in marriage and goes further to recommend monogamy as a preferred form of marriage while also protecting the rights of women under polygamy.<sup>64</sup> Other areas of discrimination are maintenance,<sup>65</sup> inequality, and inheritance.<sup>66</sup>

The impact of Customary Law, particularly on women’s human rights, remains a source of concern despite both international and regional human rights protecting family life.<sup>67</sup> This concern was also expressed in the CEDAW Committee’s comment to the Sierra Leone government: it noted the discriminatory provisions in the Customary Law and the Mohammedan Marriage Act, and urged the state to accelerate reforms to enable women and men to enjoy the same legal rights with respect to marriage, divorce, and inheritance.<sup>68</sup> The impact of Customary Law is enormous: it impedes women’s access to material goods and their rights to affirm their

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<sup>62</sup> Jamesina King, *Women’s Land Ownership and Property Rights in Sierra Leone* (Freetown 2002) 20-23.

<sup>63</sup> See Mohammedan Marriage Act, Cap 96 of the Revised laws of Sierra Leone 1960, s 9

<sup>64</sup> Article 6(c).

<sup>65</sup> Joseph Schacht, *An Introduction to Islamic Law* (Clarendon Press 1965) 161-162; see also Smart (n 55) 106.

<sup>66</sup> See Mohammedan Marriage Act, Cap 96, s 9.

<sup>67</sup> CEDAW General Recommendation No. 21 [13].

<sup>68</sup> Concluding Comments of the Committee on the Elimination of Discrimination against Women, Sierra Leone (11 June 2007) CEDAW/C/SLE/CO/5 [20-21] (hereinafter CEDAW Concluding Comments 2007).

economic and socio-cultural rights, which are important to women's independence and gender justice post-conflict.

In 2007, the Government of Sierra Leone passed into law two important bills to improve the situation of women under Customary Law.<sup>69</sup> The Devolution of Estates Act provides, amongst other things, for the spouse of an interstate, and in her absence a next of kin, to apply for letters of administration of the estate of the deceased.<sup>70</sup> It allows for the maintenance of any child born by the deceased until the attainment of age eighteen;<sup>71</sup> this can support women who gave birth to rebels who died during the war, since the law does not discriminate against any child, as long as the child is established to be that of the deceased. It also provides for a sharing formula where a spouse, child, and parents survive the interstate.<sup>72</sup> In addition, the Act devolves property to the spouse and children of the deceased, as opposed to the male head of the family as it used to be.<sup>73</sup>

The Registration of Customary and Divorce Act made customary marriages valid only if 'both spouses are not less than eighteen years old and consent to the marriage'.<sup>74</sup> The marriage is contracted in accordance with Customary Law, applicable to any of the spouses.<sup>75</sup> This law is creates more confusion however with a provision which states:

Where, either of the prospective spouses, not being a widow or widower, is less than eighteen years, it shall be necessary for the parents to give to give consent to the marriage and if the parents are dead or unable for any reason to give such

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<sup>69</sup> The Registration of Customary and Divorce Act 2007 (Act No 24 of 2007) and the Devolution of Estate Act 2007 (Act No 21 of 2007).

<sup>70</sup> Section 3(2) of the Devolution of Estates Act.

<sup>71</sup> *ibid* s 5(1).

<sup>72</sup> *ibid* s 8.

<sup>73</sup> *ibid* s 9(1).

<sup>74</sup> The Registration of Customary Marriage Law (2007), s 2(1)(a).

<sup>75</sup> *ibid* s 2(1)(b)

consent, then the consent may be given by the guardian of the prospective spouse or spouses to the marriage as the case may be.<sup>76</sup>

It further states that *‘if the consent of the parents or guardians cannot be obtained or is unreasonably withheld, a Magistrate or local Government Chief Administrator of the locality in which the marriage is to take place shall give consent’*.<sup>77</sup> The same law, by virtue of section 5(1), gives the magistrate the right to invalidate a customary marriage where it is found that it involves a minor. It also allows for conferment of validity of customary marriage on any cohabiting persons,<sup>78</sup> and makes it obligatory to register a customary marriage<sup>79</sup> and divorce.<sup>80</sup>

These new laws in Sierra Leone are a positive development in the corpus of laws to support women’s rights locally; however, several areas beg review. For example, as noted above, in the Customary Marriage and Divorce Act, Sections 2 (2) and (3) permit marriage of girls less than eighteen years once the parents, guardian, a magistrate, or a local government Chief gives consent. This breaches the provision of the Sierra Leone Child Rights Act, another post-war legal instrument, which puts the age of marriage as eighteen,<sup>81</sup> as well as other instruments mentioned earlier. Additionally, it would also have been expected that the Child Rights Act or the Registration of Customary Marriage and Divorce Act would address the issue of expressly legitimising children born out of wedlock, particularly in the circumstance of the war, or remove the idea of illegitimacy of children entirely, as many jurisdictions have done. Regardless of the compelling evidence that countless women suffered gang rape or lived ‘as bush wives’ and returned with children during the war, the new laws do not appreciate the uniqueness of the

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<sup>76</sup> *ibid* s 2(2)

<sup>77</sup> *ibid* s 2(3)

<sup>78</sup> *ibid* s 6(1).

<sup>79</sup> *ibid* ss 7(1) and 7(2).

<sup>80</sup> *ibid* s 12.

<sup>81</sup> See Child Rights Act 2007, Act No 7 of 2007 (Sierra Leone), s 34.



situation. These women are stigmatised in their community for these reasons. The guns are now silent, but these female victims must bear the lifelong brunt of a conflict they neither engineered, wanted, nor could have benefited from.

While some of the provisions are promising, challenges remain with implementation and creation of awareness. Addressing gender discrimination in post-conflict Customary Laws is critical to women coming out of war. Since the majority of the women in Sierra Leone fall under the arm of law, a stronger law and better enforcement and accountability mechanisms are desirable for ensuring women's independence and material gains post-conflict.

#### **4. Liberia**

##### *a. Legal Status of women in Liberia*

###### *Constitution*

The 1986 Constitution of Liberia – the supreme law – provides for the state to direct its policy towards all citizens without any form of discrimination, offering opportunities for employment and livelihood under just and humane conditions.<sup>82</sup> It also goes further, recognising the need to protect fundamental rights without any form of discrimination.<sup>83</sup> It states in Articles 11(b) and (c) ‘all persons irrespective of ethnic background, race, sex, creed, place of origin or political opinion, are entitled to the fundamental rights and freedoms of the individual...’ and ‘all persons are born equal before the law and therefore entitled to the equal protection of the law’. By virtue of Article 2 of the Constitution, Liberia is governed by statutory laws and common law of the

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<sup>82</sup> The Constitution of the Federal Republic of Liberia (1986), s 2.

<sup>83</sup> *ibid* s 11(a).

formal legal system, and Customary Law. Article 65 of Chapter VII of the Liberian Constitution further affirms that the courts are empowered to apply statutory law as well as Customary Law in accordance with the standards enacted by the Legislature Liberia. Thus, Liberia operates a dual system of law. The Revised Rules and Regulations Governing the Hinterland of Liberia regulate the Customary Law.

Under the Constitution, the President of Liberia is empowered to sign international treaties, conventions, and international agreements on behalf of the state, which the legislatures are expected to approve. Article 61 of the Constitution provides that no statute or treaties shall be enforced except if they have been fully published; however, Article 62 of the Constitution goes further to say that all treaties should be duly published immediately after ratification. Though the CEDAW is yet to be approved and published by the legislature, the government has ratified several other treaties, including the African Charter on Human and People's Rights. The Constitution gives men and women equal rights to own property alone and in association with others. However, the reality shows that women's ability to own property is not equal to men's.<sup>84</sup>

*b. Customary law*

Just as in Sierra Leone, women in Liberia suffered discrimination under Customary Law before the war. Despite the development of laws in Liberia, the discrimination persists, though the situation appears better than that of Sierra Leone. This is due to Constitutional provisions – in

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<sup>84</sup> See *ibid* 22(a): 'Every person shall have the right to own property alone as well as in association with others; provided that only Liberian citizens shall have the right to own real property within the Republic'; 23(a): 'The property which a person possesses at the time of marriage or which may afterwards be acquired as a result of one's own labors shall not be held for or otherwise applied to the liquidation of the debts or other obligations of the spouse, whether contracted before or after marriage; nor shall the property which by law is to be secured to a man or a woman be alienated or be controlled by that person's spouse save by free and voluntary consent'. See also Seodi White and Rosemarie James, 'An Analysis of the Law from a Gender Perspective in Liberia: Final Assessment Report,' Submitted to the Office of the Gender Advisor (OGA) United Nations Mission in Liberia (UNMIL) and the Ministry of Gender and Development, Government of Liberia (1 August 2009) 14.

existence even before the war – which can check customary law when it conflicts with the Constitution or criminal law.<sup>85</sup> In terms of land access and inheritance, which are intertwined, women suffer more under Customary Law, as it allows the woman to retain her rights to property if she remains within her husband’s family. However, where a widow chooses to leave her husband’s family, she forfeits her rights to the property.<sup>86</sup>

In Liberia, the Equal Rights of the Customary Marriage Law of 1998<sup>87</sup> allows spouses under traditional marriages to inherit, as in statutory marriages. It repeals the Customary Law practices on the devolution of estates, allowing a wife in a customary marriage to make a will disposing of her property, keeping her children in the home of her husband after his death. The law also gives the woman a right to at least one third of her husband’s entitlements regardless of whether she aided him in the acquisition of the property or not. Likewise, the law allows the wife to seek redress in court in respect of any violations.<sup>88</sup>

The Domestic Relations Act of Liberia makes provision for issues pertaining to marriage, which include rights and duties of married persons, custody, guardianship, and adoption of children. It also provides for medical examination before marriage;<sup>89</sup> this aspect of the law has been criticised as an incursion on people’s privacy and right to bodily integrity.<sup>90</sup> The law further gives the guardianship of the child to the father upon separation, except if he refuses. This provision violates the Convention on the Rights of the Child, the CEDAW, and the Protocol to

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<sup>85</sup> Liberia CEDAW Report 22.

<sup>86</sup> White and James (n 84) 24.

<sup>87</sup> Equal Rights of the Customary Marriage Law of 1998 (approved 7 October 2003 and published by Authority of the Ministry of Foreign Affairs, Monrovia, Liberia on December 1, 2003).

<sup>88</sup> *ibid* s 2.5.

<sup>89</sup> Liberian Code of Laws, An Act adopting a New Domestic Relations Law (1973), title 9, s 2.5..

<sup>90</sup> See also White and James (n 84) 24.

the African Charter on the Rights and Welfare of the Child, which provide that the best interest of the child should be considered.<sup>91</sup>

The Devolution of Estates and Inheritance for Spouses of both Statutory and Customary Marriage Act also provides for the same rights in marriage for spouses whose marriages were conducted under both Customary and Statutory laws.<sup>92</sup> It prohibits the recovery of dowries,<sup>93</sup> making a Customary Law wife entitled to one-third of her husband's properties, regardless of whether they acquired it jointly or not.<sup>94</sup> The law protects the human rights of the wife,<sup>95</sup> makes the wife's property exclusively her own, criminalises the husband's attempt to acquire the wife's property,<sup>96</sup> prohibits and criminalises the practice of making a wife confess to illicit affairs and confessional damage,<sup>97</sup> prohibits and criminalises marriage of those under sixteen,<sup>98</sup> and makes it unlawful for parents to choose husbands for daughters.<sup>99</sup> As Unruh notes, the impact of this law and the work surrounding it appear to vary; the law has received resistance from rural men and people within the government.<sup>100</sup>

The view was also expressed in the Liberia CEDAW report (2008) that despite these developments in laws on marriages under the Customary Law, women are still regarded as property. They are still subservient, and have virtually no role to play in the family decision-

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<sup>91</sup> See Convention of the Rights of the Child, Art 3.

<sup>92</sup> See *ibid* ch 2, s 2.1.

<sup>93</sup> Devolution of Estate Law (2003), s 2.2.

<sup>94</sup> *ibid* s 2(3).

<sup>95</sup> *ibid* s 2(5).

<sup>96</sup> *ibid* s 2(6).

<sup>97</sup> *ibid* s 2(7).

<sup>98</sup> *ibid* s2(9).

<sup>99</sup> *ibid* s 2(10).

<sup>100</sup> Jon D. Unruh, 'Land rights in postwar Liberia: The volatile part of the peace process' (2009) 26 *Land Use Policy* 425-433.

making process; rather, they are confined to bearing and bringing up children and serving their husbands. Moreover, females are still being given into marriage by their parents whether or not they consent.

Compared to Sierra Leone, Liberia has several laws that are useful to women; however, the major challenge in making them effective has been the political will to implement the laws and also lack of awareness about their existence.

## **5. Gender-based Sexual Violence during the war in Sierra Leone and Liberia**

Gender-based violence during the wars was not only a result of the conflict, but also a tool utilised by rebel forces to terrorise, humiliate, and coerce the civilian population into submission.<sup>101</sup> The atrocities that were committed had no boundaries.<sup>102</sup> Reports show that the war exploited the existing vulnerability of the women, who, according to King, ‘were used and abused, maimed, mutilated, tortured, raped, gang raped, abducted, forced into sexual slavery and drugged, their houses were looted, they were internally displaced and lost their livelihoods.’<sup>103</sup> Based on the prevalence of sexual violence during the wars in Sierra Leone, 50,000 to 64,000 internally displaced women may have been subjected to sexual violence, while over 250,000

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<sup>101</sup> Human Rights Watch, *Sexual Violence within the Sierra Leone Conflict* (2001)  
<<http://www.hrw.org/backgrounder/africa/sl-bck0226.htm>> accessed 15 July 2010

<sup>102</sup> Binaifer Nowrojee, ‘Making the Invisible War Crime Visible: Post Conflict Justice for Sierra Leone’s Rape Victims’ (2005) 18 *Harvard Human Rights Journal* 90. Nowrojee further captures Sierra Leone’s situation during the war, pointing out that ‘indiscriminate killings, amputations, rapes and abductions characterized Sierra Leone’s decade-long conflict’.

<sup>103</sup> Jamesina King, ‘Gender and reparations in Sierra Leone: The wounds of war remain open’ in Ruth Rubio-Marín (ed), *What happened to the women? Gender and reparations for human rights violations* (Social Science Research Council 2006) 250.

Sierra Leonean women and girls generally are estimated to have suffered different degrees of sexual violence.<sup>104</sup>

As noted above, rebels abducted thousands of women and children and conscripted them or married them to members of the rebel forces. Some were made to perform forced labour, such as cooking, washing, and pottery, with the majority of them having children by the rebels.<sup>105</sup> One of the major effects of the war on women and girls was displacement. Tens of thousands of people, mostly women and girls, were forced to flee their homes and move to urban areas or refugee camps in Guinea, where they lived without adequate assistance or protection.<sup>106</sup>

As noted in the Sierra Leone Truth and Reconciliation Report:

The abductions and use of young girls and women as bush wives and sex slaves by armed groups during the war could be attributed to the traditional beliefs that governed this issue prior to the war. Some of the armed groups did not consider it an aberration to rape young women or use them as sex slaves.<sup>107</sup>

The forms of violence women suffered before the war affected their lives are often linked to the extreme violence they suffered during the conflicts and could affect their reintegration in the society after the war.

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<sup>104</sup> See Physician for Human Rights, 'War related Sexual Violence in Sierra Leone: A population based assessment' (Boston Physician for Human Rights 2002) 2. See also Combined initial, second, third, fourth and fifth periodic reports of States parties: Sierra Leone (2006) CEDAW/C/SLE/5 (hereinafter Government of Sierra Leone CEDAW) 35.

<sup>105</sup> *ibid* 91.

<sup>106</sup> See Médecins Sans Frontières (MSF), Sierra Leone: Repatriation process endangering health and security of thousands (12 April 2002) <<http://reliefweb.int/report/sierra-leone/sierra-leone-repatriation-process-endangering-health-and-security-thousands>> accessed 20 January 2012.

<sup>107</sup> *SLTRC* (n 3) 103.

According to Rehn and Sirleaf, throughout the world, women experience violence ‘because they are women’. They also emphasise that ‘...because so much of this persecution goes largely unpunished, violence against women comes to be an accepted norm, one which escalates during conflict as violence in general increases’.<sup>108</sup>

The Physician for Human Rights report shows the prevalence of sexual violence during this period: virtually all (94%) of the households randomly surveyed reported at least one person having suffered abuse during the decade of war. These abuses included abduction, beatings, killings, rape and other forms of sexual violence, forced labour, gunshot wounds, serious injuries, and amputations. Approximately one out of every eight (female and male) households interviewed (13%) reported some form of war-related sexual violence, and 9% of individual female respondents reported such abuses. The prevalence of war-related sexual violence during the ten-year period of the civil war is equivalent to the lifetime prevalence of non-war-related sexual violence among the study participants.<sup>109</sup>

Also, the statistics at a Rape Victim Center in Freetown show that a total of 2,350 survivors who registered in Freetown between March 1999 and March 2000 suffered various degrees of abuse, including physical, psychological, and sexual violence. The number of survivors who reported physical violence was put at 23.4%, psychological 9% and sexual 55.4%, with two women raped by at least fifteen to twenty men.<sup>110</sup>

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<sup>108</sup> *ibid* 108. See also E. Rehn and E. Johnson Sirleaf, *Progress of the World's Women, 2003* in ‘Volume I: Women, War and Peace – The Independent Experts’ Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace-building,’ (United Nations Development Fund for Women 2002) 13.

<sup>109</sup> MSF (n 106) 26.

<sup>110</sup> Augusta Taqi in Baksh-Sooden and Etracht (n 27) 85.

As further observed in the Truth and Reconciliation Commission's report, the subordination of women has not changed up to the present day in Sierra Leone; even after the war, certain socio-cultural practices and factors, including 'high fertility rates; high infant and child mortality rates; high adult female illiteracy rates; exclusion of women from receiving certain services and instruments in rural areas such as land, extension services, credit and farm inputs; and the disproportionate amount of the workload in agriculture'<sup>111</sup> show the prevalence of gender disparity in post-conflict society.

Liberia had a similar experience of brutal civil war where it is estimated that over 250,000 people were murdered and about one third of the population suffered displacement. The World Health Organization's 2005 report on Liberia estimated that 82% of women were subjected to multiple forms of violence, both sexual and non-sexual, while 77% experienced rape.<sup>112</sup> It is noteworthy that in the case of Liberia, over 38% of combatants were women.<sup>113</sup> The torture experienced in Liberia resulted in both mental and physical health crises, which were particularly visible among women and girls. According to a research report, the culture of violence in Liberia led to the 'militarization of intimate relations' and a 'secondary epidemic of domestic violence'.<sup>114</sup> Furthermore, the report showed that women experienced sexual torture, which had a damaging effect on their sexual and reproductive health. There was also a prevalence of

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<sup>111</sup> Honourable S. Y Gbujama (Minister of Social Welfare, Gender and Children's Affairs), 'Gender Mainstreaming: Sierra Leone Poverty Reduction Strategy 2004-2006' (9 October 2003) *SLTRC Report* 108.

<sup>112</sup> Marie-Claire Omoyando, 'Sexual Gender Based Violence and Health Facility Needs Assessment' World Health Organisation (9-29 September 2005) in Elana Luppino and Victoria Webbe, 'Women count in country civil society monitoring reports' (2011) <<http://www.gnwp.org/up-content>> accessed 20 October 2011.

<sup>113</sup> Karen Campbell-Nelson, 'Liberia is not just a man thing: Transitional Justice Lessons for Women, Peace and Security' (International Center for Transitional Justice 2008) 7.

<sup>114</sup> Isis-WICCE research report, 'A situation analysis of the Women Survivors of the 1989-2003 armed conflict in Liberia' (2008) *Isis-WICCE* xiii.



sexually transmitted diseases amongst women, including HIV/AIDs and other major diseases, which the current Liberian Health system has failed to respond to.<sup>115</sup>

However, rape and other forms of sexual and gender-based violence remain unabated even after the war – estimates show that in 2007, about 46% of the rape cases that treated by the Liberian National Police involved children under the age of eighteen. While during the war these forms of violence were perpetrated by fighting forces and rebels, the aftermath reports show that ex-combatants, close family relations, and neighbours are more culpable. The UN Joint programme fact sheet also shows that 15% of those who were raped ended up getting pregnant.<sup>116</sup>

## **6. Rape and sexual offences laws in Sierra Leone and Liberia**

In both Liberia and Sierra Leone, rape was a crime even before the war. In Sierra Leone, it is an offence under common law, and rape law is often traced to the British Offences Against Person Act of 1861. Under this Act, rape is not defined per se; but rather, the law expresses rape as ‘the unlawful carnal knowledge of a woman without her consent’.<sup>117</sup> This form of definition is not gender neutral; this law sees rape only from the point of view of the female being the target and one of the requirements for rape is penetration.<sup>118</sup> Under this law, what constitutes penetration is not defined, but proof of carnal knowledge is defined as ‘*it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge but a carnal knowledge shall*

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<sup>115</sup> *ibid* xxiv.

<sup>116</sup> Joint Programme of the Government of Liberia and the United Nations, ‘Fact Sheet: Sexual and Gender Based Violence in Liberia’ <<http://stoprapenow.org/uploads/features/SGBVemail.pdf>> accessed 12 June 2012.

<sup>117</sup> See Offences Against Persons Act 1861, s 48, 63; see also Archibald, *Pleading Evidence and Practice in Criminal Cases* (35<sup>th</sup> edn) 1146.

<sup>118</sup> *ibid* s 63.

*be deemed complete upon proof of penetration only*'.<sup>119</sup> As such, the law is restrictive – rape is seen from the male perspective and excludes any other form of penetration that may occur, such as the use of foreign objects, animals, or any other methods. Though the rape law did not define penetration, the use of the words ‘carnal knowledge or carnal connection’ implies that rape is complete upon penetration. War testimonies have shown several ways that penetration may occur outside of using the male organ, and established this as a common phenomenon in war. For example, during the Sierra Leone war, a ‘14-year-old girl was stabbed in the vagina with a knife’ when she refused to have sex with the rebel; another woman had small pieces of burning firewood inserted into her vagina.<sup>120</sup> Thus, for a country coming out of war, this rape law is grossly insufficient.

Furthermore, the law classifies rape of any person over the age of sixteen as a felony with a maximum sentence of life imprisonment.<sup>121</sup> However, the statutory law Cap 30, Protection of Women and Girl Act, Section 1 provides:

Any person who procures or attempts to procure any girl or woman under twenty-one years of age, not being a common prostitute or of known immoral character, to unlawful carnal connection, either within or without Sierra Leone with any other person shall be guilty of an offence.

Section 2 further provides that *‘Any person who by threats or intimidation procures or attempts to procure any: woman or girl to have unlawful carnal connection, either within or without Sierra Leone, shall be guilty of an offence.*’<sup>122</sup> This law also makes corroboration of

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<sup>119</sup> *ibid* s 63.

<sup>120</sup> Amnesty International, ‘Sierra Leone: Rape and Other Forms of Sexual Violence Against Girls and Women’ (Report) (2000) AI Index AFR 51/35/00. 2.

<sup>121</sup> *ibid* s 48.

<sup>122</sup> Protection of Women and Girls Act, Cap 30, Laws of Sierra Leone (1960) s 2.

evidence of a witness a precondition of conviction.<sup>123</sup>

The Prevention of Cruelty Against Children law also makes carnal knowledge of a girl under the age of thirteen unlawful, whether with or without her consent, a felony which carries a maximum of fifteen years imprisonment;<sup>124</sup> while unlawful carnal knowledge of a girl between the ages of thirteen and fourteen, whether with or without her consent, is considered a misdemeanour and carries a maximum sentence of two years.<sup>125</sup>

As evident from the foregoing, the language of the law is very biased and archaic. For example, analysing Section 1 of the Protection for Women and Girls Act, a careful reading of the wording, ‘*not being a common prostitute or of known immoral character*’, provides the perpetrator with a defence or an excuse for the commission of the offence, and also indirectly removes the protection of the law from the victim of rape. The onus is thus put on her to prove that she is not of immoral character. This is very different from the emerging views in the International Criminal Court and judgments in the International Courts of former Yugoslavia and Rwanda, which move away from arguing on issues of penetration and consent to redefining rape in a way that addresses the general violation of fundamental human rights and dignity.<sup>126</sup> For example, the *Akayesu* decision went beyond the traditional definition of rape to hold that ‘a

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<sup>123</sup> *ibid* s 5: ‘No person shall be convicted of an offence under this Ordinance upon the evidence of one witness unless such witness be corroborated in some material particular by evidence implicating the accused’.

<sup>124</sup> Prevention of cruelty to Children Act, Cap 31, Laws of Sierra Leone 1960 s 6.

<sup>125</sup> *ibid* s 9.

<sup>126</sup> K. Alexa Koenig, Ryan Lincoln, and Lauren Groth, ‘The Jurisprudence of Sexual Violence’ (2011) A working paper of the sexual violence and accountability Project, Human Rights Center, University of California, Berkeley, 14.

physical invasion of a sexual nature, committed on a person under circumstances which are coercive'.<sup>127</sup>

Also, by focusing on consent, Sierra Leone's rape law singles out the victim to prove that the rape occurred – hence the requirement for corroboration of the evidence, even though this form of requirement shifts the focus to the victim to prove her innocence. Barad and Slatery point out that the reliance on consent focuses more on the interaction between the victims and the perpetrators than on the act of rape itself as a violation of human dignity.<sup>128</sup> Moreover, the Rome Statute provides that corroboration is not necessary for sexual offences.<sup>129</sup>

The TRC report, however, notes that the challenges of the rape law in Sierra Leone remain enormous: rape is under-reported, and relatively few prosecutions of rape or crimes of sexual violence have taken place. Victims do not want to prosecute rape because of fear of stigmatisation. Likewise, the judicial system is not conducive to the prosecution of such crimes, opening many victims to intimidation.<sup>130</sup> Other issues concern the rules of procedure in Sierra Leone's courts, which often discourage the victim from instigating legal proceedings.<sup>131</sup>

Beyond the above, another lacuna in the rape law is the failure to explicitly state the age of consent. Furthermore, the law is unclear about unlawful carnal knowledge committed against

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<sup>127</sup> *Prosecutor v Akayesu* (Trial Judgment) ICTR-96-4-T (1996) [688].

<sup>128</sup> Elizabeth Barad and Elisa Slatery, 'Gender Based Violence Laws in Sub-Saharan Africa'; Report prepared for the Committee on African Affairs of the New York City Bar (2007) 26.

<sup>129</sup> Rome Statute of the International Criminal Court (adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998) U.N. Doc A/CONF. 183/9 Article 63(4).

<sup>130</sup> SLTRC (n 3) 118.

<sup>131</sup> *ibid* 119.

persons aged between fourteen and sixteen.<sup>132</sup> In practice, there are misconceptions about these laws, which lead to lesser charges for the rape of a child than an adult.<sup>133</sup> Another challenge is that in Sierra Leone, marital rape does not exist. One of the things that the decision against the RUF case at the Special Court of Sierra Leone demonstrated<sup>134</sup> is the link between forced marriage and marital rape. Given that Sierra Leone still suffers from the forced marriage phenomenon even after the war, the failure to have a law in place recognising marital rape is also considered a major gap.

Some of the interviews conducted with Sierra Leonean women<sup>135</sup> show that women and girls face challenges in prosecuting offences like rape and other sexual violence because of the attitudes of the police and the judiciary. Another major challenge is the lack of awareness of these laws; for example, a senior staff member at the Ministry of Gender responded to the question of the implementation and effectiveness of these laws in this vein:

We are empowering people to support the law, we are creating awareness of the laws. There are no safe houses for domestic violence. There is a lot of reorganisation of the Ministry to be headed by a Directorate; there is a national committee on GBV which is chaired by the Hon Minister. Partners are working on prevention on GBV we are collaborating with INGO/UNFPA/UNDP/UNFPA on access to justice to women; we are also working with the lawyers.<sup>136</sup>

The above shows that women and girls in Sierra Leone have always experienced gender discrimination, even before the conflict; laws, culture, religion and tradition limited women's legal and human rights.<sup>137</sup> The social contexts within which women exist in Sierra Leone make

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<sup>132</sup> HRW (n 101) 20.

<sup>133</sup> *ibid* 20.

<sup>134</sup> *Prosecutor vs. Sesay, Kallon and Gbao (RUF Case)* (Judgment) Case No.SCSL-04-15-T, *Prosecutor v Sesay, Kallon and Gbao* (Judgment) SCSL-04-15-T (25 February 2009).

<sup>135</sup> Excerpts from FGD conducted with sex workers (Amnesty office, Freetown, Sierra Leone, April 2010).

<sup>136</sup> Interview with a senior official of the Ministry of Social Welfare and Gender (Freetown, Sierra Leone, April 2010).

<sup>137</sup> Coulter (n 75) 59.

them more susceptible to violence and also create an atmosphere where violence is tolerated and even accepted by society. The imbalance in the legal system and this social context further complicated women's situation during wartime; the impunity with which women's rights were treated in peacetime aggravated the violence in war.

Unlike Sierra Leone, Liberia transformed its rape law after the war. Before the war, rape was a first-degree felony: if the rapist inflicted serious bodily injuries on the victim, he faced the death penalty or life imprisonment. The old rape law also stipulated that sexual intercourse with a girl below sixteen years was "statutory rape" because the individual (girl) has no capacity to give "mental consent" to the act.<sup>138</sup> Despite this prohibition, rape was treated with impunity; as Bruthus notes, rape was a 'bailable offence' – 'a suspect arrested for rape could be out of jail and back in town by the next day'.<sup>139</sup> The fact that rape and other sexual offence were treated with such levity led to the gravity of sexual violence and rape that Liberian civilian witnessed during the war.

Post-2003, the Association of Women Lawyers in Liberia (AFELL) initiated the need for a review of the Penal Law to respond to the continued violence against women, and in particular, the fact that the old rape law was inadequate to respond to these violations. Thus, in 2005, the Liberian Parliament passed into law an act repealing the old rape law,<sup>140</sup> adopting a new rape law, and amending the law to also cover gang rape.<sup>141</sup> The law provides for a broader definition of the offence of rape, stating that:

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<sup>138</sup> Criminal Procedure Law (1978), ss 31.3 and 32.1.

<sup>139</sup> L. Bruthus, 'Zero Tolerance to Liberia rape' (2007) 127 *Forced Migration Review* 35-35.

<sup>140</sup> An act adopting a new penal law and repealing sections 31.3 and 32.1 of the Criminal Procedure Law (1978).

<sup>141</sup> Ch14, s 14.70; and also provides for gang rape (2006).

A person who has sexual intercourse with another person (male or female) has committed rape if, (a) (i) He intentionally penetrates the vagina, anus, mouth or any other opening of another person (male or female) with his penis, without the victim's consent,<sup>142</sup>

Or

(ii) He/She intentionally penetrates the vagina or anus of another person with a foreign object or with any other part of the body (other than penis), without the victim's consent'.<sup>143</sup>

(b) The victim is less than eighteen years old, provided the actor is eighteen years of age or older.<sup>144</sup>

The definition provides for a better protection from rape, broader than most other domestic jurisdictions.<sup>145</sup> It also provides more cover for the victim, even when the rape involves other objects. The radicalisation of the Penal Code may not be unconnected with the grave experiences of rape that occurred during the civil war. The law provides for gang rape<sup>146</sup> as a more severe form of rape with stiffer penalties, and defines gang rape as a first-degree felony if an accused purposely promotes or facilitates rape or agrees with one or more persons to engage in or cause the performance of conduct constituting rape.

The law goes further to define sexual intercourse:

(i) Penetration, however slight, of the vagina, anus or mouth, or any other opening of another person by the penis; or

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<sup>142</sup> s 14.70(1.)(a)(i).

<sup>143</sup> s 14.70(ii).

<sup>144</sup> s 14.70 (b).

<sup>145</sup> Criminal Law (Codification and Reform) Act Zimbabwe, s 65 defines rape from the female and male perspective: when a male person knowing have sexual intercourse with a female and knows she has not consented or the risk and possibility that she has not consented to it makes him guilty of the offence of rape; or the Ethiopia Criminal Code Article 620, which states that '[w]hoever compels a woman to submit to sexual intercourse outside wedlock whether by use of violence or grave intimidation or after having rendered her unconscious or incapable of resistance'.

<sup>146</sup> *ibid* s 14.70(2).

(ii) Penetration, however slight, of the vagina or anus of another person by a foreign object or any other part of the body (other than the penis).

The law makes rape a first degree felony if the victim is eighteen years of age at the time of the commission of the offence,<sup>147</sup> if the offence involves gang rape,<sup>148</sup> if the rape results in either permanent disability or serious bodily injury to the victims,<sup>149</sup> or if, at the time of the relevant act or immediately before it began, the defendant threatened the victim with a firearm or other deadly weapon.<sup>150</sup> The maximum sentence for first-degree rape is life imprisonment.<sup>151</sup> However, where the condition set out above is not met, rape in Liberia becomes a second-degree felony with a maximum punishment of ten years imprisonment.<sup>152</sup>

Consent in the new rape law is also broad. The law states that consent must be by choice or freedom,<sup>153</sup> and it is presumed to be lacking under the following conditions: if violence is used against the victim, or the victim is caused to fear that immediate violence will be used against him/her, at the time of the relevant act or immediately before the act,<sup>154</sup> if the victim was detained,<sup>155</sup> asleep or unconscious;<sup>156</sup> with physical disability;<sup>157</sup> administered with drugs or substance;<sup>158</sup> or the defendant intentionally induced the victim to consent by impersonating.<sup>159</sup>

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<sup>147</sup> *ibid* s 14.70(4).

<sup>148</sup> *ibid* s (4)(ii).

<sup>149</sup> *ibid* s 4(iii).

<sup>150</sup> *ibid* s 4(iv).

<sup>151</sup> *ibid* s 4(b).

<sup>152</sup> *ibid* s 4(c).

<sup>153</sup> *ibid* s 3(b) 1.

<sup>154</sup> *ibid* s 3(ii)(a)14.70.

<sup>155</sup> *ibid* s 3 (ii)(c).

<sup>156</sup> *ibid*, s 3(ii) d.

<sup>157</sup> *ibid* s 3 (ii) e.

<sup>158</sup> *ibid* s 3(ii) f.

<sup>159</sup> *ibid* s 3(ii) g.



The new rape law in Liberia is a positive development in criminal jurisprudence, and the inclusion of gang rape is significant given the experiences of women and girls during the last war in Liberia. One other provision of the law is the ‘in camera provision’ for hearing rape cases.<sup>160</sup> This is important for a country coming out of conflict and where women still move around with the stigma that accompanied the rape and sexual violence they suffered as a result of war. A major setback, however, is the provision relating to corroboration.

A major problem with the law is the ambiguity created by its drafting, which might lead to misinterpretations.<sup>161</sup> The law also did not address the issue of compensation to victims and further failed to include the offence of marital rape. It has attracted plenty of criticism from civil society and elsewhere; for example, in an interview with the Women in Peace Network (WIPNET) during my field work in Liberia,<sup>162</sup> the groups questioned the legislative intention of the rape law where it states in section 14:70(a), ‘Any other opening of another person’, arguing that this can be abused, since it is ambiguous. However, the Chairman of the Liberia Bar Association, who was a member of the committee who drafted the law, explained that the expression “any opening” was inserted to address the abuse of children ‘through fingering’ which was common-post war, adding however that judges in future will better assist in redefining this clause. He did, however, caution that the law is very open to abuse in the present context of post-war Liberia: ‘one of my fears is that presently the judges have made rape a non-bailable offence.’<sup>163</sup> According to the new law, ‘for the purposes of bail it shall be treated as per capital offence’.<sup>164</sup>

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<sup>160</sup> *ibid* s 5(a).

<sup>161</sup> See White and James (n 84) 17.

<sup>162</sup> Interview with Leena (Liberia, January 2012).

<sup>163</sup> Interview with members of the Liberia Bar Association (Liberia, January 2012).

<sup>164</sup> See s 4(3)(b).

Despite the promulgation of the law, rape continues to plague Liberian society, and the CEDAW committee thus encourages the State party to take steps towards organising educational and public awareness programmes to combat the epidemic of violence against women.<sup>165</sup> It further calls on the government to strengthen enforcement mechanisms in the country.

## **7. Operationalising Resolutions 1325 and 1820 in Sierra Leone and Liberia**

The Women, Peace and Security Resolutions (WPS) have grown in number since 2000,<sup>166</sup> having been adopted at the regional and national levels. They are complimentary to the Beijing Declaration and Action Plan<sup>167</sup> and all other existing human rights norms, addressing gender equality and protection of women during and in the aftermath of conflict. Through the WPS, the UN General Assembly<sup>168</sup> has called for the need to increase the protection of women and girls in armed conflict and post conflict situations. The Resolutions emphasise three principal themes: the protection and promotion of women's rights, the prevention and prosecution of gender and sexual violence; and the participation and representation of women in the peace processes (gender balance).

Furthermore, UNSCR 1820 calls for 'effective steps to prevent and respond to acts of sexual violence', 'in order to ensure maintenance of international peace and security'. Broadly

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<sup>165</sup> Liberia (7 July 2009) CEDAW/C/LBR/CO/6.

<sup>166</sup> United Nations Security Council Resolution 1325 (adopted by the Security Council at its 4213th meeting on 31 October 2000) Res/1325/2000; United Nations Security Council (adopted 19 June 2008) Res. S/1820/2008; United Nations Security Council (adopted 30 September 2009) Res. S/1888/2009; United Nations Security Council (5 October, 2009) Res. S/1889/2009); United Nations Security Council (16 December 2010) Res. S/1960/2010.

<sup>167</sup> Fourth World Conference on Women, Beijing, P.R.C. Sept. 4–15, 1995, Beijing Declaration and Platform for Action (Sept. 15, 1995) A/CONF 177/20. See also Beijing +5 Outcome Document (2000) UN Doc A/S/-23/10 Rev 1.

<sup>168</sup> Outcome document of the twenty-third special Session of the United Nations General Assembly entitled 'Women 2000: Gender Equality, Development and Peace for the Twenty First Century' (20 April 2000) A/S/-23/10/REV.1.

speaking, Resolution 1820 addresses issues of ‘sexual violence in armed conflict’.<sup>169</sup> Given the negative impact of armed conflict on civilians, the Resolution further calls on all ‘parties to armed conflict to immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence’,<sup>170</sup> and encourage dialogue among conflict resolution and peace-building stakeholders.<sup>171</sup>

The Resolution, amongst other things, re-affirms rape and other sexual violence as war crimes, crimes against humanity, or ‘a constitutive act with respect to genocide’, and also excludes crimes of sexual violence from amnesty.<sup>172</sup> It calls for an end to impunity as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation, while requesting training programs for all peacekeeping personnel to enable them to better respond to sexual violence.<sup>173</sup> It encourages troop- and police-contributing countries, in consultation with the Secretary-General, to consider steps to heighten personnel awareness and responsiveness in UN peacekeeping operations to protect civilians, including women and children, and prevent sexual violence against women and girls in conflict and post-conflict situations; this includes, wherever possible, the deployment of a higher percentage of women peacekeepers or police.<sup>174</sup> It also emphasises the role that the peace-building commission can play in addressing sexual violence committed during armed conflict and ensuring that women are well represented.<sup>175</sup>

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<sup>169</sup> UNSCR 1820 [1].

<sup>170</sup> *ibid* [2].

<sup>171</sup> *ibid* [2].

<sup>172</sup> *ibid* [4].

<sup>173</sup> *ibid* [7].

<sup>174</sup> *ibid* [8].

<sup>175</sup> *ibid* [11].

Resolution 1820 further calls for state parties to develop and implement policies, activities, and advocacy for the benefit of women and girls affected by sexual violence in armed conflict.<sup>176</sup> Its framework has been seen as an improvement on existing gender provisions in the Geneva Convention, which address the issue of sexual crimes.<sup>177</sup> As Barrow observes, one major advantage of 1820 is that it not only ‘recognises systematic use of sexual violence against civilian populations’, but focuses on the negative impact of sexual violence in armed conflict as well.<sup>178</sup> Barrow also notes that 1820 stresses the importance of the prevention of sexual violence and sets out a range of measures to support the protection of civilians, particularly women and girls during armed conflict, while also ‘helping to expand the norms of conflict prevention’.<sup>179</sup> Furthermore, it contributes towards the expansion of international humanitarian law by including a clause supporting the evacuation of women and girls to protect them from sexual violence.<sup>180</sup> By adopting UNSCR 1820, sexual violence has moved away from the private to the public sphere, gaining more political relevance. The adoption may therefore be seen as an acknowledgement that sexual violence is a threat to international peace and security.<sup>181</sup>

Based on the aspirations above, the governments of Sierra Leone and Liberia adopted National Action Plans. Sierra Leone has also adopted National Action Plans (NAPs) to support the implementation of the United Nations Security Council Resolution 1325 and 1820. The NAPs focus on the need to support gender equality and participation in post-conflict reconstruction and

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<sup>176</sup> Aisling Swaine, ‘Assessing the Potential of National Action Plans to Advance Implementation of United Nations Security Council Resolution 1325’ (2009) 12 *Yearbook of International Humanitarian Law* 403-433.

<sup>177</sup> Amy Barrow, ‘UN Security Council Resolution 1325 and 1820: Constructing gender in armed conflict and International Humanitarian law’ (2010) 877 *International Review of the Red Cross* 232.

<sup>178</sup> *ibid* 232.

<sup>179</sup> *ibid* 233.

<sup>180</sup> *ibid* 232.

<sup>181</sup> Letitia Anderson, ‘Politics by Other Means; When Does Sexual Violence Threaten International Peace and Security?’ (2010) 17:2 *International Peace Keeping* 244.

rehabilitation processes.<sup>182</sup> The five pillars of the NAP in Sierra Leone encompass the Prevention of Conflict, including Violence against Women and Children (SGBV) and the need to prosecute and punish perpetrators effectively, and Safeguard Women and Girls.

In 2007, the Sierra Leone Government signed into law the Domestic Violence Act<sup>183</sup> to further redress gender violations in the area of domestic abuse. The state passed other laws that same year, including the Prevention and Control of HIV and AIDS Act.<sup>184</sup> The new laws in Sierra Leone remain ineffective; challenges include the costly court processes and the poverty in Sierra Leone; people give money to the victim to settle out of court.<sup>185</sup> Sierra Leone's government, in partnership with the Gender and Children Ministry, also created about 40 Family Support Units attached to police stations across the country, with a mandate for the investigation of all forms of child abuse, sexual and domestic violence, and commercial and other forms of exploitation of women and vulnerable members of society. The unit suffers problems of accessibility, lack of adequate funding, and poor understanding of gender issues. Most of the people interviewed in Sierra Leone during my fieldwork were not even aware of the existence of this unit.<sup>186</sup>

Apart from the Liberian National Action Plan on 1325,<sup>187</sup> the National Gender Based Violence (GBV) Plan of Action was adopted in Liberia in 2009 to support the need to effectively and

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<sup>182</sup> Government of Sierra Leone 'Sierra Leone National Action Plan (2010)  
<<http://www.resdal.org/experiencias/plan-sierra-leona.pdf>> accessed January 12 2012

<sup>183</sup> Act No 20 of 2007.

<sup>184</sup> Act No 8 of 2007.

<sup>185</sup> Annalise Moser, 'Women Count Security Council Resolution 1325: Civil Society Monitoring Report' (October 2010) *A Project of the Global Network of Women Peacebuilders* 18 <<http://www.gnwp.org/what-we-do/policy-advocacy/in-country-and-global-monitoring-of-united-nations-security-council-resolution-1325>> accessed 20 June 2012.

<sup>186</sup> Focus Group Discussion (Makeni, Sierra Leone, April 2010).

<sup>187</sup> Government of Liberia, 'Liberia National Action Plan' (2009)  
<[http://www.un.org/womenwatch/ianwge/taskforces/wps/nap/LNAP\\_1325\\_final.pdf](http://www.un.org/womenwatch/ianwge/taskforces/wps/nap/LNAP_1325_final.pdf)> accessed 3 June 2011.

efficiently deal with the issue of gender-based violence, provide appropriate skills to health and psychosocial providers, reform the legal system, and provide mechanisms to support the establishment of outreach services for survivors of violence.<sup>188</sup>

In Liberia, one of the newest developments is the creation of a Criminal Court E,<sup>189</sup> which has exclusive original jurisdiction over all new cases of sexual offences initiated by formal charge; the Court covers cases relating to rape, gang rape, aggravated involuntary sodomy, involuntary sodomy, voluntary sodomy, corruptions of minors, sexual abuse of wards, and sexual assault and trafficking in person. The testimonies from my fieldwork have also shown that the Court has been slow and incapable of dispensing justice because of the bureaucracy involved in the process of filing and getting conviction. Interviews revealed that presently over 200 cases have been ‘on the docket yet to be assigned’. As noted by WIPNET, ‘failure to provide effective response frustrates the woman who looks up to justice in the court’.<sup>190</sup> However, one of the prosecutors blamed the slow dispensation of justice on the grand jury system and the lack of enough personnel to support the unit. Efforts are being made to increase the number of staff; according to the aforementioned prosecutor, the government recently included funding support for the Sexual and Gender Based Violence Unit in the budget of the Ministry of Justice. Prior to this inclusion, the unit, which is a pilot project, benefited in its first phase from the generous donations of international development partners.<sup>191</sup> Another criticism is that the initiative is

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<sup>188</sup>Government of Liberia, ‘Ministry of Gender and Development (2011-2015), the National Action Plan for the Prevention and Management of Gender Based Violence in Liberia (2nd phase)’ 2011.

<sup>189</sup> An Act establishing Criminal Court “E” (approved September 11 2008, published by Authority Ministry of Foreign Affairs, Monrovia, Liberia).

<sup>190</sup> Interview with Bernice of the Women in Peace Network (WIPNET) (Liberia, January 2012).

<sup>191</sup> According to the Prosecutor, the first pilot stage only focused on Montserrado County (interview, Liberia, January 2012)

centralised in the state capital, neglecting the grassroots communities where most sexual and gender-based violence occurs with impunity.

The Liberian government established the Women and Children Protection Section (WAPCS) of the Liberia National Police with officers specially trained to handle situations relating to sexual violence.<sup>192</sup> Resolution 1888 enjoins state parties to encourage the presence of women in police and other military and peacekeeping operations.<sup>193</sup> A major challenge hindering the justice system in Liberia is that the police lack the most basic forms of logistics that can support adequate interventions to combat gender-based violence.<sup>194</sup> Other challenges identified in the report are corruption<sup>195</sup> and the fact that the court is not centralised (thus the distance to rural communities in Liberia).<sup>196</sup>

While most people interviewed in Liberia agreed that new policies and laws exist to prevent sexual and gender-based violence, all interviewees believed the impacts of the frameworks are not yet effective enough to deliver any form of justice to women. The awareness of the new laws in the two countries is still very low. The government must invest in bringing the laws to the people, lest they continue to be pieces of paper without any direct impact on the lives of the people whom they are meant to protect. Moreover, there remain challenges in the protection mechanisms put in place to support women post-conflict, including very few prosecutions of

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<sup>192</sup> Megan Bastick, 'Integrating Gender in Post Conflict' (2008) *SIPRI Yearbook: Armaments, Disarmament and International Security* 149.

<sup>193</sup> UNSCR 1888 [19].

<sup>194</sup> Neils Nagelhus Schia and Benjamin de Carvalho, 'Nobody gets Justice Here; Addressing Sexual and Gender Based Violence and the Rule of Law in Liberia' 5.761 (NUPI Working Paper 2009) *Security in Practice* 9 <<http://english.nupi.no/Activities/Avdelinger/Department-of-Security-and-Conflict-Management/Niels-Nagelhus-Schia>> accessed June 21 2012.

<sup>195</sup> *ibid* 16.

<sup>196</sup> Interview with WIPNET (Liberia, January 2012).

sexual violence like rape; shortage of skilled social workers to support women's health needs; delay in the collection of evidence; and delay in prosecution of offenders.

The attempts to implement the WPS agenda, though representing positive developments in both countries, face challenges requiring a more strategic and holistic approach. This includes addressing the structural causes of women's inequality and providing adequate funding to support institutions so that they deliver effective justice system. Lewis notes that the integration of the principle of WPS might work if there were real equity and equality between women and men: 'Then gender mainstreaming becomes a way of maintaining that equality. But when you start from gross inequality, mainstreaming simply entrenches the disparities'.<sup>197</sup>

## **8. Conclusion**

This chapter comprehensively examined the legal frameworks in Sierra Leone and Liberia before and after the war, as well as assessing the socio-political contexts of both countries. Analysis in this chapter shows that the impunity with which cases of gender-based violence were handled led to the magnitude of violations experienced by women during the war, creating an intractable post-conflict context. The thesis thus argues that the patriarchal arrangements in both countries have deleteriously inhibited the enjoyment of women's rights. It further demonstrates the role of the law in the subordination of women and configuration of their identity.

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<sup>197</sup> Stephen Lewis, *Race Against Time* (House of Anansi Press 2005) 126, cited in Françoise Nduwimana, 'United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security: Understanding the Implications, Fulfilling the Obligations', 11 <[http://www.un.org/womenwatch/osagi/cdrom/documents/Background\\_Paper\\_Africa.pdf](http://www.un.org/womenwatch/osagi/cdrom/documents/Background_Paper_Africa.pdf)> accessed 20 June 2012.



The thesis also argues that both countries have failed to address the root causes of violence against women and their social exclusion; unless the law addresses the existing subordination of women and becomes sensitive to their particular needs, genuine post-conflict transformation for women will not happen. A radical shift must thus occur to remove the sexism embedded in the laws.

The WPS resolution, just like international law also promotes gender biases and stereotypes about women. The thesis contends that to guarantee gender justice for women at post-conflict, the State must be positively disposed to challenge the unseen masculine biases that are responsible for discrimination against women. The thesis argues that the State must invest in making the positive aspects of the laws responsive by creating awareness, building capacity of the users and beneficiaries of the laws, and most importantly taking all necessary steps to enforce the laws. In both countries very little is done to implement the laws, making the limited, derivable gains from the WPS agenda inadequate to respond to gender justice needs in Sierra Leone and Liberia.

Finally, this thesis contends that the governments of the two countries are obligated by international law to take adequate steps to support gender justice; it is therefore incumbent on them to promote women's human rights and dignity by putting in place comprehensive mechanisms to support both survivors and victims of past conflicts, and to provide an enabling environment for women to live free from any forms of discrimination.

The next chapter will look at the Truth and Reconciliation Commissions in both countries post-conflict, and how TRCs have supported the realisations of the WPS goals in post-conflict situations.

## Chapter Five: Doing Gender – Assessment of Post-Conflict Transitional Justice context in Sierra Leone and Liberia

*“A crime committed against her body became a crime against the male estate”<sup>1</sup>*

### 1. Introduction

The former UN Secretary General, Kofi Annan, described post-war reconstruction processes as actions undertaken after a conflict to consolidate peace and prevent reoccurrences of armed confrontation.<sup>2</sup> Truth-telling has been critical to national post-war reconstruction; other transformation efforts have included constitutional and legal reviews to reflect new political realities, ideological objectives, and compliance with international norms and standards.<sup>3</sup> Amidst the rich debates around transitional justice, research in this field has also shown that both the legal standards and the processes informing transitional justice mechanisms have tended to exclude women, thus indirectly allowing further violations of women’s rights post-conflict.<sup>4</sup>

This chapter focuses on transitional justice mechanisms in both Liberia and Sierra Leone and the extent to which they have contributed to the promotion of gender justice for women. The chapter thus examines the role gender plays in transitional justice. It looks at the effect of non-judicial mechanisms, particularly the inclusion processes of both countries’ truth commissions, and whether they met people’s expectations – particularly women’s. It assesses the statutes setting up

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<sup>1</sup> Susan Brownmiller, *Against Our Will: Men, Women, Rape* (Simon and Schuster 1975) 17.

<sup>2</sup> UN Secretary General Report on Africa, 1998, ‘*Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa* (13 April 1998) A/52/871 – S/1998/318.

<sup>3</sup> Rwanda used the combined mechanisms of prosecution and truth-telling, and also enacted new laws and Constitutions.

<sup>4</sup> Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (Routledge 2011) 85.

the commissions in both countries, asking whether they can model the promotion of gender justice, and whether they meets their aims of providing justice for victims in the aftermath of war.

The chapter is divided into four parts. The first is an overview of the Truth and Reconciliation Commissions and their importance to transitional justice. The second part is an assessment of the Truth and Reconciliation Commissions in the two countries and their gender biases. The third part looks at the extent to which women participated in the TRC process, as representation and participation are critical to the attainment of gender justice for women post-conflict. The fourth part looks at the TRC's findings, assessing the extent to which the TRC addresses women's concerns and prevents recurrence of the violations experienced during the war. Since the TRCs in Liberia and Sierra Leone were created after the 2000 adoption of UN Security Council Resolution 1325, three key themes serve as the basis for the assessment of the TRC as an institution: participation, protection and prevention of future abuse.

## **2. Truth and Reconciliation Commission (TRC)**

Transitional Justice has no doubt attracted much attention in recent years.<sup>5</sup> The discourse has resulted in various interventions addressing the need to support state reforms,<sup>6</sup> including initiatives led by new governments<sup>7</sup> to support accountability and hold perpetrators responsible for their wrongs. These have been a combination of both internal and external interventions. The

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<sup>5</sup> Holger Aertsen, Rohne Arsovska et al. (eds), *Restoring justice after large-scale violent conflicts: Kosovo, DR Congo and the Israeli-Palestinian case* (William Publishing 2008); Helena Cobban, *Amnesty After Atrocity: Healing Nations after Genocide and War Crimes* (Paradigm Publishers 2007); Kritz Neil (ed), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes Vols. I–III* (U.S. Institute of Peace Press 1995).

<sup>6</sup> J. Hamre and G. Sullivan, 'Towards Post Conflict Reconstruction' (2002) 25:4 *The Washington Quarterly* 85-96.

<sup>7</sup> See Hayner (n 4) 32 on Guatemala Commission and historical clarification 1997-1999

debates on the best way to address the atrocities of the past and the comparative advantages and disadvantages of truth-telling and criminal prosecutions have been numerous.<sup>8</sup> Crucially, the recent developments in Truth Commissions signal a departure from the past; they have moved to become ‘less confrontational institutions’.<sup>9</sup> For example, in Argentina and Chile, the TRCs were commissioned to investigate past atrocities, and their submitted reports led to the eventual prosecution of members of the past regime.<sup>10</sup> This is altogether different from the TRCs in Eastern Europe. In Germany, TRC work was more detailed and symbolic – amongst other things; it established causes and impacts of conflict, giving people clearer indications of the root causes, even years after these atrocities had passed.<sup>11</sup> In assessing the TRC in Germany, Beattie observes that ‘the commission demonstrates that a victim centered examination and discussion of the past legacy is possible without large scale testimony collections’.<sup>12</sup> The Commission therefore was more focused on the daily experiences of ordinary East Germans,<sup>13</sup> making the process more people-centred and promoting a feeling of knowledge and accountability; this, according to Roth-Arriaza, was seen as important to people to heal the wounds of the past.<sup>14</sup>

Truth-telling has become a mechanism that ‘delivers a range of social goods’, benefitting not only the victims, but also the transition societies as a whole. It typically includes: ‘documenting history, encouraging reconciliation, providing public acknowledgment for victims, social

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<sup>8</sup> Naomi Roht-Arriaza and Javier Mariezcurrena, *Transitional Justice in the Twenty First Century: Beyond Truth Versus Justice* (Cambridge University Press 2008) 8.

<sup>9</sup> *ibid* 3.

<sup>10</sup> *ibid* 3.

<sup>11</sup> Hayner (n 4) 53.

<sup>12</sup> Andrew H. Beattie, ‘An evolutionary Process: Contributions of the Bundestag Inquiries in East Germany to an understanding of the role of Truth Commissions’ (2209) 3:2 *International Journal of Transitional Justice* 229-249, cited in *ibid* 53.

<sup>13</sup> *ibid* 53.

<sup>14</sup> Roht-Arriaza and Mariezcurrena (n 8) 3.

sanction for perpetrators and more'.<sup>15</sup> Theidon stresses that while legal requirements reject hearsay if not well proven, truth-telling is a more liberal tool, as it allows for all forms of evidence to get to the historical truth, which in some cases could be the half-truth.<sup>16</sup> TRCs can also play the role of providing an 'alternative history', which can debunk official claims, particularly when state actors were involved as perpetrators of the armed conflict.<sup>17</sup> In the recent past, they have focused on events surrounding massive human rights abuses,<sup>18</sup> often becoming a decisive element for states in transition. They are useful for addressing serious acts of human rights violations and reducing possibilities of further outbreak, while seeking to achieve closure with the past.

Thus, at the beginning of the millennium, there was a detour as truth-telling emerged as a complement to justice. Beyond knowledge and acknowledgement of past wrongs, people also want to see justice done. This period witnessed a combination of these two mechanisms: increasing use of investigative or truth and reconciliation commissions and the use of international and transnational trials.<sup>19</sup> These two important frameworks complement each other.<sup>20</sup>

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<sup>15</sup> Niamh Reilly, 'Seeking Gender Justice in Post-Conflict Transitions: Towards a Transformative Women's Human Rights Approach' (2007) 3:2 *International Journal of Law in Context* 155–172.

<sup>16</sup> Kimberly Theidon, 'Gender in Transition: Common Sense, Women and War' (2007) 6 *Journal of Human Rights* 458.

<sup>17</sup> *ibid* 458.

<sup>18</sup> Hayner (n 4) 14.

<sup>19</sup> Roht-Arriza and Mariezcurrena (n 8) 8.

<sup>20</sup> Atypical examples are the Sierra Leone Special Court and the TRC.

One of the best TRC models is the South African Commission,<sup>21</sup> established by act of parliament and endorsed by the constitution's 'postamble'. Other examples of TRCs that combine both truth telling and trials<sup>22</sup> to deal with past atrocities include those in Argentina, Chad, Yugoslavia, Peru, Colombia, and later in Sierra Leone. The East Timor method is also significant – in this instance the TRC and special panels were adopted by the government to try perpetrators who had committed serious crimes. As Roth-Arriaza observes, while the TRC is not a substitute for prosecution, it presents a 'mutual recognition' to pay attention at the international level to issues of reparation and structural reform.<sup>23</sup> However, Minow argues that the most distinctive element of truth commissions in comparison with prosecution is the focus on the victim, which includes 'the forgotten victims in forgotten places'.<sup>24</sup> She asserts that women are often the forgotten victims of armed conflict.<sup>25</sup> The absence of women's voices post-war is a result of gender silence, because '*most truth commissions have not been active in seeking out, encouraging or facilitating testimony room for women*'.<sup>26</sup>

Thus, recent efforts show that feminist organisations and women's groups support women's participation in the TRC, since commissions represent an opportunity to present their concerns and transitional aspirations. They can also provide an avenue for policy prescriptions that can

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<sup>21</sup> The Constitution of the Republic of South Africa Second Amendment Act, 1995 (Act No. 44 of 1995): Amnesty may be given for acts, omissions, or offences described as 'acts associated with a political objective, which is defined in the Bill. The definition also requires that such conduct must comply with the internationally accepted Norgaard principles (clause 20). Only acts associated with a political objective that were committed during the period from 1 March 1960 (the month of the Sharpeville massacre) to the last possible date specified in the interim Constitution (at present 5 December 1993) shall be considered for amnesty. See also *Promotion of National Unity and Reconciliation Act*, No 34 of 1995.

<sup>22</sup> The two efforts did not occur simultaneously in most of the cases cited; for example, while Sierra Leone had the TRC and the Special Court going on side by side, Yugoslavia had the prosecution first and the Truth-telling experiences later, and in Chad, a TRC preceded the prosecution.

<sup>23</sup> Roth-Arriaza and Mariezcurrena (n 8) 8.

<sup>24</sup> M. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Beacon Press 1998) in Theidon (n 16) 458.

<sup>25</sup> *ibid* 458.

<sup>26</sup> Hayner (n 4) 78.

further engender transformative spaces. In Liberia and Sierra Leone, the TRCs were set up to respond to past atrocities; however, the extent to which they promote gender justice remains unclear.

### **3. Gender and the Truth and Reconciliation Commission: Sierra Leone and Liberia**

#### *a. Protection and integration of women's human rights and gender justice in post-conflict institutional arrangements*

The Sierra Leone Truth and Reconciliation Commission was created *vide* the Lomé Peace Agreement (LPA) of 7 July 1999.<sup>27</sup> The LPA also made provisions for the establishment of other commissions, including the Consolidation of Peace Commission, the Human Rights Commission, and the Demobilisation, Disarmament and Reintegration of combatants into society.

The drafting of the Sierra Leone TRC Act<sup>28</sup> was greatly influenced by several factors: the visit of Mary Robinson of the UN High Commission for Human Rights to Sierra Leone; subsequent interventions by the Special Representative of the Secretary-General of the UN, the National Forum for Human Rights, and the National Commission for Democracy and Human Rights; and the landmark *Human Rights Manifesto*, which was signed by the Government of Sierra Leone.<sup>29</sup>

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<sup>27</sup> 'Peace Agreement Between The Government Of Sierra Leone And The Revolutionary United Front Of Sierra Leone' (25 May 1999 to 7 July 1999) (hereafter called The Lomé Peace Agreement) <<http://www.sierra-leone.org/Loméaccord.html>> accessed 23rd September 2010.

<sup>28</sup> The Truth and Reconciliation, 2000('the Act') was adopted on 22 February 2000 and the TRC itself can be said to have taken effect on the 5th of July 2002, after the President had sworn in the seven commissioners at a public ceremony. See also 'the Witness to truth, Report of the Sierra Leone Truth and Reconciliation Committee vol 1, 24' [hereafter referred to as 'Sierra Leone TRC Report' (SLTRC)].

<sup>29</sup> Article 19, International Center Against Censorship, '*Moment of Truth in Sierra Leone; Contextualizing the Truth and Reconciliation Commission*' Article 19 & Forum of Conscience (August 2002) 17; Human Rights Watch, *Sierra Leone: Getting Away with Murder, Mutilation, and Rape*, 1 June 1999, A1103, available at: <http://www.unhcr.org/refworld/docid/3ae6a7fa0.html> [accessed 23 September 2012]



Subsequent efforts were also made through several consultations with the Civil Society Organisations (CSO) during various workshops to fine-tune the mandate, which contributed a great deal to its language.

The mandate of the TRC is provided for in Article XXVII<sup>30</sup> of the LPA, which states as follows:

A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.<sup>31</sup>

The mandate of the SLTRC is broad, and it is inexplicit about what is expected of the Commission. This problem is acknowledged in the SLTRC report, which states that:

There does not seem to be any useful or meaningful distinction between ‘mandate’, ‘object’ and ‘functions’ of the Commission. It is not possible to glean any significant nuance in Parliamentary intent from the use of these three terms. They are all components of the ‘mandate’ of the Commission.<sup>32</sup>

The lack of clarity in the mandate is a problem for the interpretation of the work of the Commission (for example, to avoid misconceptions, the Peruvian Truth and Reconciliation Commission [Peruvian CVR] <sup>33</sup>took several months to debate and interpret its mandate before it started its work).<sup>34</sup> Oftentimes, mandates are not ‘a self-evident piece of black-letter law, but

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<sup>30</sup> Lomé Peace Agreement, Art XXVI: ‘Human Rights Violation’.

<sup>31</sup> Lomé Peace Agreement, Art XXVII (1): TRC report vol 1, ‘Introduction’ 25.

<sup>32</sup> SLTRC Report: vol 1, ch 1: ‘The Mandate of the Commission’ [5] 24.

<sup>33</sup> The Peruvian Truth and Reconciliation Commission (CVR) was inaugurated on 13 July 2001, ‘To investigate human rights abuses perpetrated between 1980 and 1990 by the Shining Path, the Movimiento Revolucionario Tupac Amaru (MRTA), and the military’. Comisión de la Verdad y Reconciliación (CVR) was established by the Supreme Decree N°101-201-PCM (hereinafter called the Peruvian CVR).

<sup>34</sup> Eduardo Gonzalez Cueva, ‘The Peruvian Truth and Reconciliation Commission and the challenge of impunity’ in Arriaza et al. (n 61) 75.

one where contested interpretations [are] possible'.<sup>35</sup> The South Africa TRC noted in its report that the manner in which human rights violations have been defined in the commission mandate led to the neglect of some forms of major abuses experienced by women during apartheid.<sup>36</sup>

Thus, for the SLTRC, failure to define a clear mandate is problematic. It can be assumed that the bulk of Section 6 (1) of the SLTRC Act points to the mandates of the Commission, which amongst other things are:

To create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone; and to address impunity, to respond to the needs of the victims, to promote healing and reconciliation, and to prevent a repetition of the violation and abuses suffered.<sup>37</sup>

The other sections emphasise the object and functions and the duration that the TRC is expected to cover, which is 'from the beginning of the conflicts in 1991 to the signing of the Lomé Peace Accord'.<sup>38</sup> The implication is that though the TRC began to sit in 2002, the Commission's investigative power cannot try offences that took place after the Accord was signed by the Government of Sierra Leone and the Revolutionary United Front (RUF).

In drafting the TRC Act, one would have expected that Article XXVIII of the LPA<sup>39</sup> (which focused on women's suffering and contribution after the war) would provide guidance for the

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<sup>35</sup> Vasuki Nesiah et al., 'Truth Commission and Gender: Principles, Policies and Procedures' (July 2006) *International Center for Transitional Justice, Gender Justice Series* 14. <[https://ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English\\_0.pdf](https://ictj.org/sites/default/files/ICTJ-Global-Commissions-Gender-2006-English_0.pdf)> accessed 23rd September 2012

<sup>36</sup> Helen Scanlon and Kelli Muddell, 'Gender and Transitional Justice in Africa: Progress and Prospects' (2009) 9:2 *African Journal on Conflict Resolution* 13.

<sup>37</sup> Section 6 of the Truth and Reconciliation Commission Act 2000, which primarily sets out the objects of the TRC.

<sup>38</sup> Lomé Peace Agreement, Art XXV11(2).

<sup>39</sup> Article XXV11I(2) of the LPA provides that 'given that women have been particularly victimized during the war, special attention shall be accorded to their needs and potentials in formulating and implementing national rehabilitation, reconstruction and development programmes, to enable them to play a central role in the moral, social

inclusion of women. But the TRC Act reduced women to mere victims of sexual violation. This follows from the South Africa model, where there is a deliberate mention of sexual violence without linking it to women and girls.<sup>40</sup> By the TRC Act, the Commission, amongst other things, promised:

(b) to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict.<sup>41</sup>

As evident above, the SLTRC specifically recognises the victims of sexual abuse, but from a gender-neutral point of view. While the mention of sexual abuse is no doubt significant, the peculiar gendered nature of this abuse should have been specified; for example, in the provision above, there is a deliberate mention of the experiences of children, but not of women, despite the latter suffering enormous violations in that period. Furthermore, the mandate of the SLTRC generally addressed two categories of people: victim and perpetrator.<sup>42</sup> It states:

A person is a 'victim' where as a result of acts or omissions that constitute a violation of international human rights and humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A 'victim' may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental or economic harm.<sup>43</sup>

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and physical reconstruction of Sierra Leone'. This is the only direct acknowledgement of women's human rights violations in the peace agreement.

<sup>40</sup> Nesiya et al. (n 35) 13.

<sup>41</sup> Article 6 (2) of the Truth and Reconciliation Commission Act of 2000.

<sup>42</sup> SLTRC Report; vol 1, ch 3, 'Concepts', 87-88.

<sup>43</sup> *ibid* 87.

This is in line with the acceptable definition of victim in international law.<sup>44</sup> Perpetrators are also defined as individuals who bear personal responsibility for human rights violations and abuses, which may be state or non-state actors.<sup>45</sup> The international law of armed conflict stereotypes women, and often excludes the particular experiences of women. For example, the above definition is gender-neutral; international law portrays women as victims because they are seen as weak, and thus generalised definitions of this nature may not respond adequately to the unique challenges of women in conflict.

## **Liberia**

Like Sierra Leone TRC, the Liberia TRC was established following the Comprehensive Peace Agreement (CPA) signed between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL), and Political Parties in Accra:<sup>46</sup>

A Truth and Reconciliation Commission shall be established to provide a forum that will address issues of impunity, as well as an opportunity for both the victims and perpetrators of human rights violations to share their experiences, in order to get a clear picture of the past to facilitate genuine healing and reconciliation. (2.) In the spirit of national reconciliation, the Commission shall deal with the root causes of the crises in Liberia, including human rights violations. (3.) This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.<sup>47</sup>

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<sup>44</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Resolution 60/147 of the UN General Assembly 2005); See also The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Resolution 40/34 of the UN General Assembly 1985)

<sup>45</sup> SLTRC Report (n 42) 88.

<sup>46</sup> Part Six, Article XIII of the Accra Peace Accord (18 August 2003).

<sup>47</sup> Peace Agreement Between the Government of Liberia (GOL), The Liberians United for Reconciliation and Democracy (LURD), The Movement for Democracy in Liberia (MODEL) and the Political Parties Accra, Ghana (18 August 2003). For the full reading of the CPA, see the United States Institute for Peace Digital Collection of Peace Agreement <[http://www.usip.org/files/file/resources/collections/peace\\_agreements/liberia\\_08182003.pdf](http://www.usip.org/files/file/resources/collections/peace_agreements/liberia_08182003.pdf)> accessed 20 March 2010.

Like in Sierra Leone, the CPA also targets two categories of people, though clearer in scope and mandate, which is a development from the LPA's non-specificity. Pursuant to the CPA, Liberia enacted the Act to Establish the Truth and Reconciliation Commission of Liberia on the 12<sup>th</sup> of May 2005.<sup>48</sup> The TRC Act of Liberia benefited from literature on TRCs; it is broader and more specific, stating *inter alia* in its mandate that:

The objectives/purpose of the Commission shall be to promote national peace, security, unity and reconciliation by:

a. Investigating gross human rights violations and violations of international humanitarian law as well as abuses that occurred, including massacres, sexual violations, murder, extra-judicial killings and economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflicts, during the period January 1979 to October 14, 2003; determining whether these were isolated incidents or part of a systematic pattern; establishing the antecedents, circumstances, factors and context of such violations and abuses; and determining those responsible for the commission of the violations and abuses and their motives as well as their impact on victims.<sup>49</sup>

Campbell-Nelson defines the LTR Act as 'a gender-sensitive Act' created by the 'National Transitional Legislative Assembly'<sup>50</sup> of Liberia. In an unprecedented manner, the Liberia TRC (LTRC) Act required that the Commission adopt specific mechanisms and procedures to address the experiences of vulnerable groups and women, and to pay particular 'attention to gender-based violations'.<sup>51</sup> It also specifically requested that adequate steps be taken to provide them the opportunity to relate their experiences, stating further that women's issues should be taken into

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<sup>48</sup> On 12 May 2005, the Liberian Transitional Legislative Assembly enacted the Truth and Reconciliation Commission Act establishing the Commission and detailing its mandate <<http://trcofliberia.org/about/trc-mandate>> accessed 20 March 2010.

<sup>49</sup> Article 4 of the TRC Act of Liberia: 'Mandate of the Commission'.

<sup>50</sup> Karen Campbell- Nelson, '*Liberia is not just a man thing: Transitional Justice Lessons for Women, Peace and Security*' (Initiative For Peace Building, 2008) p 8.

<sup>51</sup> Article 4 of the TRC Act of Liberia: 'Mandate of the Commission'

the broader context in the ‘spirit of national reconciliation and healing’.<sup>52</sup> Liberia sees gender issues as part of a global problem that must be addressed to further peace and stability.

The Act in its Preamble states as follows:

*Reaffirming the commitment of the Liberian people to peace and justice, unity, national healing and reconciliation and the general principles of human and people’s rights as enshrined in the Constitution of the Republic of Liberia, the African Charter on Human and Peoples’ Rights, the Charter of the United Nations and the Universal Declaration of Human Rights and also other international conventions and protocols relating to the rights and protections of women and children.*

The specific mention of the rights and protection of women and the inference to other international human rights norms protecting women, for example the CEDAW<sup>53</sup> and the AU Protocols,<sup>54</sup> is important – this clarity of purpose distinguishes the TRC from those of Chile, Argentina, Peru, and Guatemala.<sup>55</sup>

Furthermore, the specific adoption of international human rights law provisions allows for the incorporation of a gender-inclusive interpretation.<sup>56</sup> For example, the Peruvian TRC’s only purpose was to investigate cases of gross human rights violations, including torture, forced disappearances, arbitrary detention, and kidnapping; nothing in particular was mentioned about women, gender, or sexual violence. The TRC then consulted with South Africa and Guatemala to creatively include sexual violence in its mandate.

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<sup>52</sup> *ibid.*

<sup>53</sup> Convention on Elimination of All Forms of Discrimination against Women (1979) 1249 UNTS 13.

<sup>54</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (11 July 2003) OAU Doc. CAB/LEG/66.6.

<sup>55</sup> Mantila Falconn, ‘The Peruvian Truth and Reconciliation Commission’s Treatment of Sexual Violence against Women’ (2005) 12:2 *Human Rights Brief* 1–5.

<sup>56</sup> Nesiah et al. (n 35) 14.

In South Africa, the Truth and Reconciliation Commission adopted a broad definition of sexual violence; instead of addressing sexual violence as a category on its own, the mandate addressed this as a violation under torture and inhuman or degrading treatment. This is a broader categorisation, which may be advantageous because it broadens the scope of the Commission to integrate other issues not originally conceptualised by the drafters. As Goldbatt notes, the South African Commission included ‘forced nakedness’ as a category of torture and degrading treatment.<sup>57</sup> Guatemala defines sexual violence as a type of human rights violation including ‘forced prostitution, forced unions, sexual slavery, forced abortion and forced nudity’.<sup>58</sup>

Varying interpretations have been given to what constitutes sexual violence, and a broad understanding is necessary to ensure that some victims are not excluded from truth-telling processes. In some contexts, women have agreed to sexual overtures for survival during the war, possibly in exchange for food or shelter; women in such contexts might not understand that coercive measures are a form of sexual abuse.<sup>59</sup> However, in defining sexual violence, it is important to understand the linkage between it and pre-existing socio-economic dynamics perpetrated by patriarchy, which is designed to exclude women. The CEDAW Committee has taken particular note of sexual violence occurring against women during and after conflict, calling on the state to protect women in this condition with legislation and ‘the allocation of financial resources for adequate social provision’.<sup>60</sup>

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<sup>57</sup> Beth Goldblatt and Fiona Ross, *Bearing Witness: Women and the Truth and Reconciliation in South Africa* (Pluto Press 2003); Collen Duggan and Ruth Jacobson, ‘Reparation of Sexual and Reproductive Violence’ in Ruth Rubio-Marin (ed), *The Gender of Reparation: Unsettling Gender Hierarchies While Redressing Human Rights Violations* (Cambridge University Press 2009) 133.

<sup>58</sup> Theidon (n 16) 478.

<sup>59</sup> Helen Scanlon and Kelli Muddell, ‘Gender and transitional justice in Africa: Progress and prospects’ (2009) 9:2 *African Journal on Conflict Resolution* 9–28.

<sup>60</sup> CO Bosnia-Herzegovina (2006) CEDAW/C/BIH/CO/3 [37-38], cited in Christine Chinkin, ‘Violence Against Women’ in Freeman, Chinkin, and Rudolf (eds), *CEDAW Commentary* (OUP 2012) 462.

In the case of the SLTRC, the scope of the Commission's work covers classic violations of bodily integrity, as well as crimes relating to 'destruction of property or pillage'.<sup>61</sup> This imprecision led the Commission to creatively adopt the traditional concept of civil and political rights to include economic and socio-cultural rights in its report.<sup>62</sup> Yet the analysis is not adequately gendered; the report on women takes a victim-centered approach, relying more on adopting existing definitions, particularly from international humanitarian law, to determine the effect of the war in Sierra Leone on women.

The LTRC report also provides a better gendered analysis, though not detailed in content on the laws regulating issues of women and armed conflict like SLTRC. For example, it recognises that while women suffered sexual abuse, more men suffered this form of violation than women because the LTRC broadened the definition of sexual abuse to include 'being stripped naked and humiliating men sexually'<sup>63</sup> (a large category of men were sexually abused in the Liberian war).

*b. Participation and representation of women in SLTRC and the LTRC*

UNSCR 1325 urges member states '*to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict*'.<sup>64</sup> The Resolution provides a broad political

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<sup>61</sup> William A. Schabas, 'The Sierra Leone TRC' in Naomi Roht-Arriaza and Javier Mariezcurrena (eds) *Transitional Justice in the Twenty First Century; Beyond Truth Versus Justice* (Cambridge University Press 2006) 25.

<sup>62</sup> *ibid* 25.

<sup>63</sup> *LTRC REPORT*, vol 3, 31.

<sup>64</sup> UNSCR 1325 [1].



framework for the participation of women, strengthened by Article 7 of the CEDAW,<sup>65</sup> which as noted by Wittkopp, ‘allows for participatory rights with normative strength’.<sup>66</sup> Article 7 of the CEDAW affirms the need for women’s participation in political and public life. The CEDAW Committee expatiated the meaning and scope of these articles in 1994,<sup>67</sup> and also in its General Recommendation 23 of 1997.<sup>68</sup> The overall purpose of CEDAW is to facilitate a substantive equality through state parties, fulfilling the requirement that women are given the same opportunity to influence decision-making and, therefore, impact laws and policies governing all sectors of life.

The Comprehensive Peace Agreement (CPA) expressly made provisions for gender balance in the National Transitional Government.<sup>69</sup> Following from this, the LTRC Act stated that ‘the TRC shall comprise nine commissioners’ and ‘at least four’ will be women.<sup>70</sup> The clear quota set in the Act provided a platform for the inclusion of women in the TRC. Unlike the LTRC Act, the SLTRC Act states:<sup>71</sup>

(v) Based on the recommendations from the Selection Panel and the criteria established in subsection (2) of section 3, the Selection Coordinator shall recommend four citizens’ members for appointment to the Commission, and will suggest a possible Chair. Both the Selection Panel and the Selection Coordinator should take into account gender representation and regional considerations in making their selections. While the four members might not necessarily be from each of the four regions of the country, the Commission as a whole should

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<sup>65</sup> See UNIFEM, ‘Women Peace & Security; CEDAW and Security Council Resolution 1325: a quick guide’ (2001) 5, cited in Marsha A. Freeman, Christine Chinkin, & Beate Rudolf (eds), *The UN Convention on the Elimination of all Forms of Discrimination against Women: a commentary* (OUP 2012) 206.

<sup>66</sup> *ibid* 206.

<sup>67</sup> CEDAW Committee, ‘Implementation of Article 21 of the Convention on the Elimination of All forms of Discrimination Against Women, Analysis of Articles 7 and 8 of the Convention. Report by the secretariat (30 Nov 1993) UN DOC CEDAW /C/1994/4. Cited in Sarah Wittkopp, ‘Article 7’ in Freeman et al. (n 65) 198.

<sup>68</sup> See CEDAW General Recommendation 23 [15] Women in Public Life UN Doc A/52/28/Rev.1.

<sup>69</sup> Article XXVIII of the CPA.

<sup>70</sup> TRC Act of Liberia; Article V, Section 7.

<sup>71</sup> Schedule attached to the SLTRC Act, s (1) of (3): ‘Procedure for the Selection of Nominees for Appointment to the Commission’.

represent the interests and perspectives of the country at large. If further regional representation is later desired, the Commission itself might co-opt representatives from each of the country's four regions.

Although it had more emphasis on regional distribution, the SLTRC had three women commissioners out of seven, whom the selection panel appointed.

While the proportion of women is essential to participation – for example the SADC Protocol on Gender and Development also supported the achievement of a 50% quota for women in private and public offices by 2015<sup>72</sup> – it goes further to emphasise equal representation of women in peace negotiations and decision-making.<sup>73</sup> It has been observed that beyond the numbers, the internal dynamics among commissioners could constitute a critical factor; the gender sensitivity or awareness of the staff and their ability to empathise with women victims are all factors to consider in achieving a gender-sensitive report.<sup>74</sup> As a result, just because women are appointed in a quota-based formula does not mean that women will get justice; it depends on the capacity of the members to effect a recommendation that is just and inclusive of people's concerns.<sup>75</sup> Beyond the number, therefore, it is critical that women's capacity is built to ensure that they deliver justice. For example, in Peru, where two of the twelve commissioners were women, creative measures were adopted to deal with gender-based violence. The challenge was how to make the commissioners acquire the desired knowledge to be able to deal with the peculiarity of gender within a short period. Gender training and the appointment of technical experts were

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<sup>72</sup> SADC Gender and Development Declaration (2008') article 12 (i), see also other related articles Article 5, Article 17(3) and Article 13(1); see also Beijing +5 Outcome Document (2000) UN Doc A/S/-23/10 Rev [23] and [81].

<sup>73</sup> Article 28 SADC (2008)

<sup>74</sup> Nesiya et al. (n 35) 13.

<sup>75</sup> See also Sylvia Tamale, *When Hens Begin To Crow: Gender and Parliamentary Politics in Uganda* (Foundation Publisher 1999) 31.

strategies used to support the TRC in better understanding gender dynamics and gaining the desired gender knowledge.<sup>76</sup>

Beyond building gender capacity, other variables that could improve gender equality include the openness and transparency of the process. For example, in Timor Leste, the formal involvement of women's groups in the appointment process had a considerable impact on the choice of gender-sensitive commissioners.<sup>77</sup> Other comparative figures show that in Ghana, four out of nine commissioners were women; in Morocco one out of 17; Timor Leste had two out of seven; and South Africa seven out of seventeen.<sup>78</sup>

Researchers have shown that the participation of women in the TRCs of Liberia and Sierra Leone was not as a result of deliberate efforts of the government, but more of the solidarity amongst gender activists and other national women's groups facilitating women's visibility at several peace meetings. In the two countries, women embraced the call for the truth commission, forming coalitions that insisted on gender inclusion, a task force identifying entry points, and bringing women's issues and the gender dimension of war to the Commissions' attention.<sup>79</sup>

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<sup>76</sup> Falconn (n 55) 3.

<sup>77</sup> Nesiah (n 35) 8.

<sup>78</sup> *ibid* 8.

<sup>79</sup> Binaifer Nowrojee, 'Making the invisible War Crime Visible; Post Conflict Justice for Sierra Leone's Rape Victims' (Spring 2005) 18 *Harvard Human Rights Journal* 86-104. The women's march in Sierra Leone, which occurred just before the sitting of the TRC, also impacted positively on the attendance at the hearing. Jamesina King, 'Gender and Reparations in Sierra Leone: The Wounds of War Remains Open,' in Ruth Rubio-Martin (ed), *What happened to Women? Gender and Reparations for Human Rights Violations* (International Center for Transitional Justice Series 2005) 248-284.

Prior to the LTRC, women drafted a peace agenda<sup>80</sup> insisting on women's inclusion in peace and security as a prerequisite for sustainable peace. Liberian women seized the opportunity of the TRC to provide immense support to engender the process. Through workshops and other means, the women were able to strategize how to bring women's voices to the fore. With the support of the TRC gender committee head, zonal and town hall meetings were held to mobilise women to enable them to participate in the TRC, and special thematic hearings were also organised for women. The International Center for Transitional Justice (ICTJ) and other partners also formulated a gender policy and work-plan to guide the work of the TRC in Liberia. The hearings no doubt positively impacted the representation of women at the TRC, influencing the number of women who gave evidence and appeared as witnesses.<sup>81</sup>

While both TRC reports show that people participated immensely in the processes of the Commissions, the testimonies from my fieldwork in Liberia<sup>82</sup> argue that the participation had been selective, with very little awareness created by the government. For example, one of the National Officers of the Liberian National Bar Association described the intervention in this manner: '*...some people took the TRC as an avenue for grand standing... TRC was picky, the South African Model was not followed, the TRC had a lot of limitations...*'<sup>83</sup> Interviews with women's organisations also revealed much scepticism. For example, one of the leading gender groups in the country also noted the non-inclusion and selectiveness that characterised the TRC, saying,

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<sup>80</sup> In 2003, the women drafted the Golden Tulip Declaration, which emphasised women's demand for peace and representation at peace tables.

<sup>81</sup> Karen Campbell-Nelson, 'Liberia is not just a man thing; Transitional Justice Lesson For Women, Peace and Security' International Center for Transition Justice (September 2008) (see note 51 p9).

<sup>82</sup> The fieldwork was conducted in January 2012 in the course of the production of this study.

<sup>83</sup> Interview with Counselor Theophilus C Gould (Monrovia, Liberia, January 2012).

[...] the TRC is a time bomb, what people were expecting the TRC to do, they didn't do; everyone knows the entire story that the TRC has limitations, we supported them though; WONGOSOL (Women NGO Secretariat) one of the organisations worked with us to get women to appear ... but some of the women didn't believe in the TRC, because of the way it is being managed, they said they wanted justice, not TRC what protection will we have from the TRC...<sup>84</sup>

Another leading women's group leader shed more light on this. According to her, '*the TRC was not inclusive; even when we approached them to allow us to assist them in mobilising the women, WIPNET wrote to them officially but we never got any response from them. Despite that, we sent our recommendations to them but they didn't listen to us...they were not collaborative enough*'.<sup>85</sup>

Interviewing some of the women who were victims/survivors also reveals the lack of awareness of the TRC's aims and the failure of the Commission to attract grassroots support. An interviewee revealed that '*I was not at the TRC and none of my friends went,*' adding, '*...only men they do for*' (*in local creole*), *we ask them they said after the men they will call us, but nobody did*'.<sup>86</sup>

In the Focus Group Discussion at Medina Village, the people admitted that some members of the TRC came into the village during the hearing, but they did not get any invitation – only two people (men) were invited to the TRC. The coordinator of one of the non-governmental organisations, which officially had the mandate to work with the TRC, also expressed

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<sup>84</sup> Interview with Cecilia of WIPNET (Monrovia, Liberia, January 2012).

<sup>85</sup> Interview with Bernice of WIPNET (Monrovia, Liberia, January 2012).

<sup>86</sup> Interview with Emily (Monrovia, Liberia, January 2012).

dissatisfaction in the way the TRC dealt with the issue of women; according to her, '*women were not initially included...the whole TRC was not clear...*'<sup>87</sup>

The lack of openness in this process raises a lot of issues: whether it was effective; whether it achieved the desired result; what form of justice the mechanism can facilitate, particularly for women; and most importantly, how the TRC can be carried forward.

The situation in Sierra Leone was slightly different from that in Liberia. King's work in this area also shows that the SLTRC led public hearings and workshops focusing on women and women-specific violations; this contributed largely to the participation of women at the TRC. Through their coalition, women put together various demands reflecting women's individual and collective needs. Their interventions also facilitated the near gender-balanced nature of the Special Court in Sierra Leone, with women comprising three out of seven members in the SLTRC and three out of eleven members in the Special Court as judges.<sup>88</sup>

The women's coalition assisted in identifying women survivors/victims that testified, and also ensured that crimes suffered by women were adequately addressed.<sup>89</sup> They coordinated submissions and statements containing recommendations on approaches to remedies and redress – particularly for women victims of sexual violence and rape – as well as recommendations to further strengthen the status of women in Sierra Leone. As noted by King, the participation of women in the SLTRC also positively impacted the recommendations of the SLTRC on post-war

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<sup>87</sup> Interview with Marple, Coordinator of Women NGO Secretariat (WONGOSOL) (Liberia, January 2012).

<sup>88</sup> King (n 79) 256.

<sup>89</sup> *ibid* 254.

reparations.<sup>90</sup> People interviewed claimed they were aware of the TRC's existence, and there seemed to be a general acceptance of the need for intervention in the country and an acknowledgement of efforts to include women in the process. There is also evidence of community hearings that gave women opportunities to raise their issues.

This was reflected in an interview with the Chair of the TRC, which offered insight to the method of including women:

*[...] we got several women and children cases in the TRC, they were critical cases and women commissioners were constituted to attend to the women; even during the public hearing the testifiers were shielded, women suffered intensely; the most atrocious acts of violence committed is on the sexual violation, men, even children were used, they are now adults, these women are now too ashamed to go back to their communities, cutting open of pregnant women alive and allowing them to die agonizingly. Caritas [Catholic group] identified some of the victims and sent them to TRC, which in turn referred them for reparation.*<sup>91</sup>

Interviews with both victims and civil society confirmed women's participation. For example, one of the interviewees said, *'I went to TRC to testify; my niece was also raped and several other women'*.<sup>92</sup> The Chairman, while acknowledging women's participation in the TRC, noted that *'...not all women came up for the hearing as a result of stigma and they are still suffering till date'*.<sup>93</sup> Another interviewee stated that *'...the TRC was good for us, but the model was following strictly that of South Africa; it may be traditional forms of arbitration would have been better, maybe other mechanisms like religious avenues could have achieved better results for women...'*<sup>94</sup>

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<sup>90</sup> *ibid* 258.

<sup>91</sup> Interview with Bishop Joseph Hamper (Freetown, Sierra Leone, April 2010).

<sup>92</sup> Interview with NGO member (Freetown, Sierra Leone, April 2010).

<sup>93</sup> *ibid*.

<sup>94</sup> Interview with NGO member (Freetown, Sierra Leone, April 2010).

Gender-specific interventions enhance participation and encourage broader engagement with gender issues; this can foster much energy for and solidarity with the proceedings. There are other examples of impactful experiences: in Timor Leste, for instance, the Commission convened a series of community-based discussions on the human rights' record and the Commission's work; almost 10% of these talks had exclusively female participation. The intervention contributed to understanding women's experiences and supporting the work of the TRC.<sup>95</sup>

In order to broaden the gender understanding of the Commission members, the UN and other groups in Liberia and Sierra Leone provided training. For example, in Sierra Leone, the UN Development Fund for Women (UNIFEM) and the Urgent Action Fund for Women's Human Rights provided gender training to all TRC members to enable them to understand the dynamics of gender in armed conflict; such training also enhanced the capacity of the women members of the TRC in Ghana and in Timor Leste.<sup>96</sup>

The mobilisation and training built the confidence of some women to attend the TRC; thus, in Liberia, 17,416 statements were entered into the TRC's database and about 50% were women's testimonies.<sup>97</sup> In Sierra Leone, when the statement taking was completed by March 2003, 7,706 narratives had been taken, with about 40% being women's.<sup>98</sup> The gains here were due to

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<sup>95</sup> Nesiah et al. (n 35) 29.

<sup>96</sup> Ayumi Kusafuka, 'Locating Lost Voices: The Emerging Truth of Gender Violence in Timor-Leste' (August 2006) International Center for Transitional Justice <<http://www.ictj.org>> accessed 22 February 2011

<sup>97</sup> Cibelli et al., 'Descriptive Statistics from Statements to the Liberian Truth and Reconciliation Commission. A Report by the Human Rights Data Analysis Group at Benetech and Annex to the Final Report of the Truth and Reconciliation Commission of Liberia' (June 2009) <<http://www.hrdag.org/resources/publications/Benetech-TRC-descriptives-final.pdf>> accessed 22 February 2011.

<sup>98</sup> Richard Conibere et al., 'Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leone- A Report by the Benetech Human Rights Data Analysis Group and the American Bar Association Central European and Eurasian Law Initiative to the Truth and Reconciliation Commission' (2004) <<http://www.hrdag.org/resources/publications/SL-TRC-statistics-chapter-final.pdf>> accessed 22 February 2011.



contributions by both local and international partners, and women's groups who insisted and strategised for women's participation in the process.

Security Council Resolution 1325 emphasises the participation of women in the peace process, and the Truth and Reconciliation Commission is critical in this regard. As Wittkopp observes, *'the mere presence of women in decision making bodies is not a goal in itself, but rather in the sense of meaningful presence, requires that women be given the opportunity to have a real and viable input in all decision making processes'*.<sup>99</sup> She further asserts that given that women still remain under-represented, they need to be 'compensated' by the State 'for the past and prevent future discrimination'.<sup>100</sup>

The situations in Liberia and Sierra Leone show that the mere presence of women in the peace processes might not be enough to guarantee women's participation; the state must take deliberate steps to ensure that women adequately participate in peace processes through innovative methods in order to ensure their real input.

#### **4. The TRC Report in Liberia and Sierra Leone: the Root Causes of War and its effects: the gaps between the gender reality and the report**

The work of the TRC in Sierra Leone can be divided into two phases: the first being the period when statements were taken, which lasted for three months,<sup>101</sup> and the second the public and

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<sup>99</sup> Wittkopp (n 67) 199.

<sup>100</sup> *ibid* 199.

<sup>101</sup> The statement-taking began in December 2002 and lasted until March 2003. The TRC recruited 70 statement takers, and during this period recorded 700 statements, primarily from the victims. Roht-Arriza and Mariezcurrena (n 8) 25.

private hearings, which took four months. There were also thematic hearings within this period that enabled specific issues important to the process of truth-telling to be better captured. The report consists of three comprehensive volumes and appendices. The first details the mandate of the Commission, the management rules, concepts, and methodology; the second dwells on findings, recommendations, and reparation issues. The report's second volume also summarises the main conclusions of the TRC based on both forensic data and facts collected. The third volume is divided into two sections:<sup>102</sup> the first part deals with historical antecedents and the nature of the conflict, while the second focuses on other issues relevant to the Commission's findings. These include issues of mineral resources and their role in the conflict, external factors, women and children, the relationship between the TRC and the Special Court, and the national vision for Sierra Leone post-conflict.

The Liberia Truth and Reconciliation Commission Report, on the other hand, has three volumes: the first provides the preliminary findings and determinations of the LTRC report, the second is a consolidated final report, and the third contains nine appendices addressing different themes, including women and conflict, children, religion, economic issues, media, national vision, and other items relating to the TRC.

In summary, the report identified the root causes of the conflict in Liberia as poverty, greed, corruption, limited access to education, and economic, social, civil and political inequalities, along with identity conflict, land tenure, and distribution. It also showed that all factions in the Liberian conflict participated in and were responsible for human rights violations during the conflict; that all armed factions were responsible for the gender crimes committed in Liberia

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<sup>102</sup> SLTRC Report, vols. 3A and 3B.

during the war, including rape, sexual slavery, forced marriages, and other dehumanising forms of violations; that all factions and other armed groups recruited and used children during periods of armed conflicts; and that external state actors participated in fuelling the Liberian Conflict.

The SLTRC report looked at a historical review of the causes of conflict and found the following to have contributed to the war: leadership failure, endemic greed, corruption, nepotism, weak institutional and accountability framework, lack of meritocracy by elites, mass poverty, deprivation of people's dignity, and political inequalities.<sup>103</sup>

However, people's perception of the root causes is broader than what has been identified; one major gap in the report is the failure to look at the root causes from a gendered perspective. Some of the factors revealed in this field study were identified in an interview conducted with a female Leader in Sierra Leone:

*The war was a bad experience for us in Sierra Leone – there were several causes of the war, and I will categorise them as the root causes, marginalisation, unequal distribution of resources, decline in social services, corruption, injustices, dictatorship by one party for long... women suffered during the war, all forms of gender-based violence came to play, sexual violence went unabated, what we saw during the war was a reflection of what was going on with impunity during the peace time.*<sup>104</sup>

Other emerging issues include the state of the justice system and the rule of law; the research shows that a complete breakdown of law and order existed before the war. Describing this state of lawlessness, a well-known human rights lawyer in Sierra Leone said: ‘...before the war access

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<sup>103</sup> SLTRC Report, vol. 3B.

<sup>104</sup> Interview with Campaign for Good Governance (Freetown, Sierra Leone, April 2010).

to justice was crude, the court was overcrowded, it was so faulty that it amounted to impunity ... women had little or no access to justice'.<sup>105</sup>

The research reinforces the findings of the TRC that the fabric that held the society together was broken, revealing a complete loss of confidence in the government, political mis-governance, poverty, greed, inequality, and other social and political vices that pervaded the country. The testimonies further show that people in Sierra Leone were helpless and weak and, as such, could not hold the government accountable.

From the perspective of women, the root causes of the war were described as frustration, helplessness, and lack of accountability existing before the war; a 65 year-old woman in Masangbo village near Makeni said that '...because the government did not listen to the demands of the people that was why the war started'.<sup>106</sup>

For women, the situation was worse: their tales reveal that the discriminatory laws prevailing before the war reinforced the unique situation of women during the war; they experienced a feminisation of poverty, inequality, and other different forms of violations, which compounded their situation during conflict. Thus, one Sierra Leonean interviewee challenged the assumption that the war brought all the havoc; she argued that the sexual violence and indiscriminate killings in the community were condoned by the system even before the war, but became more aggravated during it. She argued further that the failure to address these violations before the war gave room to what the women experienced. This is better captured by another interviewee, a

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<sup>105</sup> Interview with a former member of the Human Rights Commission (Freetown, Sierra Leone, April 2010).

<sup>106</sup> Interview in Makeni (Freetown, Sierra Leone, April 2010).

staff member of the Ministry of Gender and Development, who said, ‘before the war gender based violence was like part of the custom; it is acceptable if my neighbour rapes my child – what people will say is that the rapist should marry her’.<sup>107</sup> This form of practice encourages child marriage and abuse, which became present during the war. However, neither of the TRC reports identifies the unequal status of women prior to the war as one of the root causes of the war.

However, the report does recognise that women and girls were particularly singled out to suffer the most brutal human rights violations recorded in any conflict, including forced recruitment, rape and abuse as sexual slaves, torture, and other inhumane acts. Moreover, forced displacements, abductions, arbitrary detentions, and killings were the most common violations, with the National Patriotic Front of Liberia (NPFL) and the RUF responsible for planning and executing military operations against the state of Sierra Leone.<sup>108</sup> The report failed to link the situation of women before the war to these occurrences.

The root causes of war in Liberia were similar to the above scenarios, although more complex and with racial and ethnic undertones. For example, most of the people interviewed traced the root causes to the founding history of Liberia, which later degenerated to:

[...] social marginalization amongst the free slaves and the Malato with the minority wanting continuous power. This situation later changed in the 80s resulting in series of coups caused by disaffection, corruption, tyrannical rule and poverty.<sup>109</sup>

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<sup>107</sup>Interview with a staff of the Ministry of Gender and Development (Monrovia, Liberia, January 2012).

<sup>108</sup>SLTRC Report, vol 2, ch 2: ‘Findings’.

<sup>109</sup>Interview with staff of the Ministry of Justice in (Monrovia, Liberia, 18 January 2012).

Similarly, an interviewee of the Human Rights Commission said that

Liberia has been operating on a one party system. The process became explosive in the 80s – by then the American Liberians saw themselves in the position of authority and as such operated dictatorially, which led to the frustrations of the people and the experience of several coups until the full blown war.<sup>110</sup>

The testimonies show how violence leads to and is fuelled by poverty and denial of rights.

The testimonies in Liberia identified gender inequality as one of the underlying factors of war, though not the dominant factor; this is explained by the obvious participation of several women as actors during the war. For example, the testimonies show that women were relegated to the background before the war, despite their role as household heads and the economic backbone of most families; as observed by one male interviewee, ‘women were seen as a weaker sex’. However, according to a female interviewee, ‘my mother was the first to join the force voluntarily to protect her home and her children since the death of our father’.<sup>111</sup> Poverty in Liberia made the women more vulnerable to participating in the war.

The effects of the war were more damaging to women, according to the accounts received from most interviewees. One of the people interviewed in Madina village in Robert Sport, Cape Mount County said, ‘The war damaged the little business we were doing, those who were helping us to survive were killed... as at today we are still in problem and we are very angry that nothing has really changed except the sound of the guns, all other hardship still remains’.

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<sup>110</sup>Interview with a member of the Independent National Human Rights Commission (Monrovia, Liberia 10 January 2012).

<sup>111</sup>Interview with survivor cadjat (Monrovia, Liberia, 19 January 2012).

Other testimonies describe loss of livelihood, displacement, loss of loved ones and properties, lack of basic access to health care, torture, and systemic violence against women. The findings during the research work, however, provided a greater understanding of the root causes of the war beyond the issues identified in both TRC reports, with emphasis on why women suffered violence and the fact that women's human rights were neglected even before the war, which only further perpetuated ordinarily accepted norms of impunity for women's rights violations.

## **5. Conclusion**

UNSCR 1325 specifically addresses the issues of post-conflict reintegration: it calls for gender perspectives in peace keeping operations, the need for participation and representation of women, and the need for legal frameworks and institutions to be sensitive to gender needs. However, the reality of these two States is far from these provisions. This thesis contends that the legal framework of the TRC(s) is largely gender neutral, with tacit reference to gender; the frameworks fail to comprehensively address what gender means to women.

Emphasis in the two TRC reports on sexual violations excluded other issues, particularly women's reintegration, displacement, loss of properties and other non-sexual violations ultimately intrinsic to women's post-conflict experiences. Accordingly, both reports failed to link the role of gender to the root causes of war; rather, they viewed women's issues through masculine lenses, emphasise women as sex objects and victims.

The thesis argues that managing transitional processes must be freed from masculine biases to respond to the particular situation of women and must propose long term measures that can satisfy women's material needs.

Failure to adequately address women's issues in the two TRC reports thus poses a challenge to gender justice and the practical application of the WPS agenda. The thesis therefore contends that it is important for transitional justice to take a broader perspective in its responses to adequately address gender justice at post-conflict.

The next chapter will examine the outcome documents and assess the extent to which women receive justice and their needs have been met. It will further examine the effect of the outcome documents and their recommendations on post-conflict reformulations.



## **Chapter Six: Impact of Transitional Justice Mechanisms on women: Lessons from the field in Sierra Leone and Liberia**

### **1. Introduction**

The adoption of UNSCR 1325 in 2000 signified the international community's readiness to support the integration of gender perspectives into post-conflict peace negotiations and mechanisms, and possibly address the injustices pervading peace and security issues. The integration of women into peace processes addresses inequalities; it can also contribute to dismantling gender hierarchies built around the structures of transitional justice.<sup>1</sup> Gender justice concern is about effecting justice through the peculiar needs of men and women and a gender lens. This chapter looks at the emerging issues from the Truth and Reconciliation Commissions in Sierra Leone and Liberia – the processes, outcomes, and how the exercise has impacted on the lives of women in Sierra Leone. The chapter incorporates the views of women from the field to verify how effectively this unique transitional justice mechanism promotes gender justice in the two countries.

The chapter is divided into five parts. The first is a general background to the Women's Report of the two Truth and Reconciliation Commissions, while the second looks at key issues emerging from the report; this includes findings in relation to sexual and non-sexual incidents. The third part looks at the recommendations of the TRC, particularly issues relating to reparation, and

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<sup>1</sup> Christine Chinkin and Hilary Charlesworth, 'Building Women into Peace: the international legal framework' (2006) 27.5 *Third World Quarterly* 937- 957.

assesses the extent to which it can promote gender justice. The fourth part looks at gender justice and the TRC from the perspective of women, while the fifth and last part offers concluding remarks.

*a. Overview of Sierra Leone and Liberia TRC Reports on Women*

The SLTRC report included an entire chapter titled ‘Women and the armed Conflict in Sierra Leone’.<sup>2</sup> It provided an extensive situational analysis of women during the war, along with the policy and methodology of taking testimonies. The policies, for example, emphasised the need for women – particularly those who had suffered rape and sexual violence – to make their statements to women statement-takers trained specifically to deal with accounts involving rape and sexual violence.<sup>3</sup> The policy also made provisions allowing for women themselves to have the option of deciding whether their statements should be regarded as confidential or reported. One supposedly gender-sensitive policy of the Commission is that statements should be taken in camera and not necessarily in the presence of the husband or father, unless insisted upon by the statement giver.<sup>4</sup>

The Commission also encouraged female statement takers to address female issues, such as rape, forced marriages, forced pregnancy, and sexual assault. Another of the Commission’s policies was having special hearings for women. The call for separate women’s hearings was modelled in South Africa as a way of increasing women’s participation and providing women with a ‘safe environment’ to speak about themselves. In describing the benefit of women’s hearings,

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<sup>2</sup> Witness to the Truth, Report of the Sierra Leone Truth and Reconciliation Commission, vol 3B, ch 3, Women and the Armed Conflict in Sierra Leone (Sierra Leone Truth and Reconciliation Commission 2004) (hereafter called ‘the SLTRC Report 2004’).

<sup>3</sup> *ibid* 88 [17].

<sup>4</sup> *ibid* 88 [20].

Goldblatt and Meintjes argue that they provided opportunities to bring more women into the South African TRC process, and allowed women to speak about their sexual and biological violations, which they may not want to share in the presence of men. Experience from South Africa further shows that women were afraid to speak about themselves for several reasons, including self-blame, women's secondary status in society, threats or restrictions placed by persons in position of authority, the privacy surrounding sex, and the fact that they might not want to name the horror they suffered in public.<sup>5</sup>

Like the Sierra Leone Report, the Liberian Truth and Reconciliation Report also dedicated a volume to women, titled 'Women and Conflict'.<sup>6</sup> The report looked at transitional justice in Liberia and the gender dimension of the conflict; it identified gender-specific experiences of the war, the multiplicity and complexity of gender in the war in Liberia, its impact, and consequences, and also looked at emerging recommendations for women's advancement post-conflict. While the Sierra Leone report also provided women's testimonies to demonstrate the level of violation suffered, Liberia's report was more analytical of the situation than descriptive.

The LTRC report showed that more women statement takers were recruited than males and that statements from women constituted approximately 47% of all statements given to the TRC.<sup>7</sup> In emphasising the role of gender, the LTRC report observed that various episodes of the armed conflict affected men and women differently. While men accounted for nearly half of all reported

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<sup>5</sup> Beth Goldblatt and Sheila Meintjes, 'Dealing with the Aftermath: Sexual Violence and the Truth and Reconciliation Commission' (1997) 36 *Agenda: No to Violence* 7-18. See also Lyn Graybill, 'The contribution of the truth and reconciliation commission towards the protection of women's human rights in South Africa' (2001) 24:1 *Women Studies International Forum* 1-10.

<sup>6</sup> Republic of Liberia 'Truth and Reconciliation Commission, Volume Three: Women and the Conflict' (2009) <[http://trcofliberia.org/resources/reports/final/volume-three-1\\_layout-1.pdf](http://trcofliberia.org/resources/reports/final/volume-three-1_layout-1.pdf)> accessed 12 September 2010.

<sup>7</sup> Republic of Liberia, Truth and Reconciliation Commission, Volume II: Consolidated Final Report (2009) 66 <<http://trcofliberia.org/>> accessed 9 September 2010.

violations compared to one third for women, women were uniquely targeted (because of their sex) throughout the conflict and its different phases. The report further observed that over ‘70% of all sexual based violations reported were against women’.<sup>8</sup> Unlike the SLTRC’s deliberate method of ensuring that women’s voices are heard, the LTRC provided for a gender committee with broad participation, cutting across civil society to address and organise outreaches.<sup>9</sup> However, a gender policy was developed as an addendum to the TRC Act.<sup>10</sup>

On the whole, both reports covered the legal, political, social, and economic situations of women before and after the war, demonstrating that women had been exposed to both physical and structural violence. The analyses echo and reinforce the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Committee’s General Recommendation 19<sup>11</sup> on Violence Against Women, which defines gender-based violence from a holistic perspective covering all spheres of women’s lives.<sup>12</sup> Furthermore, the African Union Women’s Protocol also defined violence against women in similar broad terms, as:

[...] all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.<sup>13</sup>

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<sup>8</sup> *ibid* 69.

<sup>9</sup> *ibid* 70.

<sup>10</sup> Gender Policy of the TRC of Liberia appendix to the Republic of Liberia, ‘Truth And Reconciliation Commission Volume Three: Appendices Title I: Women and the Conflict’ (2009) 95 -101 (hereafter called the LTRC Women Report 2009).

<sup>11</sup> CEDAW General Recommendation No 19 on Violence Against Women (entered into force 1992) A/47/38.

<sup>12</sup> Christine Chinkin, ‘Violence Against Women’ in Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (eds), *The UN Convention on the Elimination of all Forms of Discrimination against Women: a commentary* (OUP, 2012) p452

<sup>13</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (adopted 11 July 2003) CAB/LEG/66.6 Article 1(5).

Notably, the SLTRC report focused more on detailed analyses of sexual offences and the guiding international jurisprudence.<sup>14</sup>

## 2. Key Issues Emerging from the Report

### a. Addressing Sexual Violence and Rape in the SLTRC and LTRC Reports

In addressing rape testimonies,<sup>15</sup> the SLTRC relied on the international jurisprudence relating to sexual violence and rape as precedented in ICTY, ICTR, and the ICC.<sup>16</sup> Defining rape as a physical invasion of a sexual nature, it stated:

The definition of rape (as well as of forced prostitution and other sexual violence) includes a broad concept of force including threat thereof and coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.<sup>17</sup>

It further noted that evidence of exertion of temporary power, will, and control by the combatants in Sierra Leone was enough to show that force and coercive elements were present to prove rape. This reflects the findings in the *Furundzija* judgment of the ICTY.<sup>18</sup> On consent, the SLTRC relied on the ICC rules of Evidence,<sup>19</sup> which assert that rape is committed as long as the coercion undermines the victims' capacity to give genuine consent; thus, sexual invasion of minors is seen as rape.

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<sup>14</sup> Sanderijn Duquet, 'Gender Aspects of the Truth and Reconciliation Commission in Sierra Leone' (2010) <[http://works.bepress.com/sanderijn\\_duquet/1](http://works.bepress.com/sanderijn_duquet/1)> accessed 2 July 2011. See also SLTRC Report (n 2) 129.

<sup>15</sup> The SLTRC Report (n 2) 130, The ICC Elements of Crime and Procedure (year?) ICC-ASP/1/3 at Article 7(1)(g)(i).

<sup>16</sup> See SLTRC Report (n 2) 130 [180].

<sup>17</sup> *ibid* [180].

<sup>18</sup> On rape, torture and forced nakedness as inhuman treatment, see *Furundzija and Celibici Judgements* of the ICTY, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, (Appeal Chambers) IT-96-23 and IT-96-23/1-A, (12 June 2002).

<sup>19</sup> ICC Rules of Procedure and Evidence, ICC-ASP/1/3, Rule 70 (a), (b), (c).

The LTRC Women and Armed Conflict Report, on the other hand, categorised all of the following as sexual violence: rape, gang rape, multiple rapes, sexual abuse, sexual slavery, forced pregnancy, forced termination and disembowelment of pregnancy.<sup>20</sup>

Rape has been characterised globally as a silent war crime;<sup>21</sup> the implication is that most victims are reluctant to discuss their personal experience of rape. This could explain the low reporting of rape in Sierra Leone: the statistics show that out of 40,242 violations reported, rape constituted about 3.9%. In South Africa, rape reporting was also very low likewise in Guatemala rape was also reported as a secondary experience.<sup>22</sup> Without a correct attitude to investigating rape and other sexual violence in both judicial and non-judicial forums, women voices will remain inaudible in naming and shaming the name this offence. The Sierra Leone model of special women's hearings was no doubt useful; however, most of the interviewees who did not have the opportunity to attend the hearings believed that the TRC should have taken more deliberate steps beyond the hearing to reach more women and allow more victims' voices to be heard. Sierra Leone is a very rural and traditional community; another methodology that took this unique experience into consideration could have created more opportunities for women to hear their voices.

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<sup>20</sup> Republic of Liberia, Truth and Reconciliation Commission, Volume Three, Appendices, Title 1, 'Women and the Conflict' Volume Three, 2009 (hereafter called LTRC Report) 40.

<sup>21</sup> Human Rights Watch, 'We'll Kill You if you Cry: Sexual Violence in Sierra Leone Conflict' 15:1 (A) (January 2003) 35.

<sup>22</sup> Priscilla B Hyner, *Unspeakable Truths Transitional Justice and the Challenges of Truth Commissions* (Routledge 2011) 86.

Rape is a question of power, influence, control, and masculinity; it goes beyond class and other factors that inhibit women's enjoyment of rights and reinforce women's inequality.<sup>23</sup> One of the reasons identified in early international discourse for the abuse of sexual violence is that rape humiliates a woman and her community. As Chinkin further observes, rape is a silencer that undermines wellbeing and injures the mind of individual and community alike. For survivors, it carries the burden of sexually transmitted diseases, HIV/AIDS, unwanted pregnancy, abortion, the agony of having the child of an unknown rebel, and displacement. In order to bury the shame, some women commit suicide.<sup>24</sup>

Rape has long been a priority of international war laws, and international jurisprudence has seen it as a strategy of war, which recent developments have reaffirmed.<sup>25</sup> Criminalising rape has created a sense of deterrence, but it is yet to break the silence around rape. Even in South Africa, Peru, and Guatemala, where women shared their experiences about the war and its effects on them and their families, they did not speak about personal experiences of rape.<sup>26</sup>

Peru's TRC experience reaffirmed the need to reassess the gender discourse surrounding the crime of rape. In Peru, women preferred describing rape in the third person (there was a deliberate effort by feminists to engender the TRC, and the Commission went out of its way to

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<sup>23</sup> Christine Chinkin, 'Rape and Sexual abuse of Women in International Law' (1994) 5 *European Journal of International Law* 326-341.

<sup>24</sup> Ibid 329.

<sup>25</sup> The Rome Statute of the International Criminal Court of 1998 has reaffirmed rape and other forms of sexual violence as crimes against humanity and war crimes; see Rome Statute Articles 7 and 8.

<sup>26</sup> J.M. Falconn, 'The Peruvian Truth and Reconciliation Commission's Treatment of Sexual Violence against Women' (2005) 12 *Human Rights Brief* 1-4.

bring women to talk; however, women talked about other issues and very little about rape in the first person).<sup>27</sup>

All the people interviewed during the fieldwork for this study in both Sierra Leone and Liberia admitted that widespread sexual and gender-based violations, particularly rape, occurred during the decades of war. Several reports have also confirmed systemic violation – a 2003 Human Rights Watch report<sup>28</sup> documented various forms of violation, including young girls being deflowered, rape of different forms and degrees, sexual torture including sexual mutilation, forced pregnancy, forced abortion, abduction, sexual slavery, forced labour, and conscription.

Affirming the above, a female discussant at a Focus Group Discussion interviewed in the course of my research in Makeni, Sierra Leone, captured the situation of women during the war while narrating her experience:

*[...] they came into our house and killed my papa who was a soldier, seized all our properties; one of the invaders took me and my mama, my mama was helping the head of the rebels' wife. There were five girls in the rebel house and I was the youngest; when the rebels came to Freetown, the rebel I was with, left all of us and we ran, I was again captured on the way by another rebel, they asked me to 'tot' (carry heavy load) for them and for six months I was used as a slave, when they come from the war zone they will sleep with me.<sup>29</sup>*

Aisha also had a similar experience:

*[...] my parents had ten children, two of them dem force join the soldiers. I was raped by several men, I was captured, they also beat me whenever I refuse them, I was in primary 3 when the war started, I was nine years, I was taken to Okra Hill and was made to carry load, I have a bad leg now, because my legs were swollen because of long walk, I was put in the truck and they fought with bombs, I saw*

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<sup>27</sup> *ibid* 3.

<sup>28</sup> See Human Rights Watch (n 21) 3.

<sup>29</sup> Interview with Matty (pseudonym) (Makeni, Sierra Leone, April 2010).



*many people died and many rebels too died, they gave me white thing to sniff, my father and mother all died, I cannot find my people after the war, nobody help me to locate them, the rebel leader was killed and I escaped and the ECOMOG save me close to Guinea, when I was running away...*<sup>30</sup>

A survivor interviewed during the field research narrates her experience:

*[...] I was 14 during the war, I was taken as bush wife for the commando, they said 'I get beauty', I walked to Conakry, I was there for two weeks, I was beaten, they arranged seven men for seven women and they ask us to have sex together in the open. I was introduced to guns, they will ask us to go and steal to be able to eat, they asked us to take Indian hemp and cocaine ... my brother was looking for me, he came there and tried to free me, they killed him with gun, when they were fighting my brother, he asked me to run, I ran towards Mali and walked on my foot for 14 days, when the ECOMOG captured me, I was taken to a refugee camp, they maltreated me, I was raped again and I ran away...*<sup>31</sup>

Just as in Sierra Leone, the Women Report in Liberia acknowledged the extensive violations against women, and gave an account of their enormous suffering of rape and sexual violence, whether as combatants or victims. The report also acknowledged the role that masculinity played in the Liberian war.

According to an interviewee in Monrovia:

*The rebels entered into the village in the night; I was with my husband in the room and he said we should run into the bush, we ran to hide in the bush with our three children, on our way my husband was shot on the leg, he managed to escape and kept running with us, he got tired along the way and died. I then took the three children and began to run with them, we later escaped to a shelter in my uncle's house; the rebels came in the night and killed my uncle, held me captive for three weeks, they raped me in turns, they locked me up, came in anytime they like for the period I was there...*<sup>32</sup>

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<sup>30</sup> Interview with Alimat (pseudonym) (Freetown, Sierra Leone, April 2010).

<sup>31</sup> Interview with Maltilda (pseudonym) (Freetown, Sierra Leone, April 2010).

<sup>32</sup> Interview with Beno (pseudonym) (Medina Village, Liberia, January 2012).

The report by WANEP showed that women in Liberia not only experienced sexual violence, but they also experienced different forms of torture; one of the female respondents was reported to describe her experience as such:

*[...] after the 7 rebels raped me until I started bleeding heavily, they then opened my legs and started kicking me, up to now my back still hurts... my bladder was affected and I could not hold pupu. And up to now if I feel like urinating and I delay for some seconds, the urine can come out in voluntarily.*<sup>33</sup>

Evidence shows that innocent women were forced into slavery and subjected to forced marriage and forced sexual intercourse.<sup>34</sup> The SLTRC thus identified the common practice of ‘bush wives’ as a form of forced marriage, which is a category under the definition of sexual slavery.<sup>35</sup>

In defining and addressing this violation, the Commission identified two essential elements unique to this crime: ‘exercise of any of all of the powers attaching to the right of ownership over one or more persons...’ and ‘the forced participation in one or more acts of sexual violence’.<sup>36</sup> The Commission adopted the definition from the Rome Statute,<sup>37</sup> where sexual slavery was seen as a form of violation and, as such, ‘the perpetrator caused the victim to engage in one or more acts of sexual nature’.<sup>38</sup> The major elements include rape, slavery, torture, and forced marriage. Forced marriage has been seen as a form of sexual slavery, and the evidence of this in armed conflict is abundant.<sup>39</sup> Reports also show that the impacts of forced marriages, particularly on

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<sup>33</sup> Isis-WICCE ‘A situation analysis of the Women Survivors of the 1989-2003 armed conflict in Liberia’ (2008) *Research Report* 119.

<sup>34</sup> HRW (n 21); SLTRC Report (n 2) 163.

<sup>35</sup> SLTRC Report (n 2) 131 [184].

<sup>36</sup> SLTRC Report (n 2) 131.

<sup>37</sup> Rome Statute of the International Criminal Court, at Article 7(2)(c). See also the ICC Elements, at Articles 7(1)(g)-2 and 8(2)(e)(vi)-2.

<sup>38</sup> SLTRC Report (n 2) 131 [183].

<sup>39</sup> Forced marriages of girls and young women by armed opposition groups have been documented in recent armed conflicts in Sierra Leone (1991-2001), Liberia (1990-2003), Uganda (1986-present), the Democratic Republic of Congo (1998-present), Algeria (1994-present), and Kashmir (1990-present).

young girls and women, 'are often severe and long lasting and encompass a number of psychological, emotional, physical, social, economic and cultural elements'.<sup>40</sup> The effects can lead to forced pregnancy and giving birth to children that are often stigmatised and rejected by society.

Another sexual violation in the two countries was forced pregnancy. The SLTRC did not use the Rome Statute's definition of forced pregnancy;<sup>41</sup> rather, it relied on the Vienna Declaration and Programme of Action,<sup>42</sup> which refers to forced pregnancy as the confinement or other means of preventing pregnant women from obtaining abortion.<sup>43</sup> The CEDAW Committee, in looking at health, sex, and gender discrimination, required that the state 'interpret health needs from the perspective of women's needs and interest'.<sup>44</sup> The Committee also noted that various legal and regulatory barriers affect women's access to health care;<sup>45</sup> these include the criminalisation of abortion, a legal barrier to women's access to effective health care.<sup>46</sup> Under Sierra Leone law, abortion is illegal,<sup>47</sup> punishable by imprisonment from three years to life, even when performed for medical reasons. As such, in armed conflict situations, women victims of forced pregnancy do not have the option of abortion, since the law prevents them from accessing it.

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<sup>40</sup> Dyan Mazurana and Khristopher Carlson, *The girl child and armed conflict: Recognizing and addressing grave violations of girls' human rights* in 'United Nations Division for the Advancement of Women (DAW) in collaboration with UNICEF Expert Group Meeting Elimination of all Forms of Discrimination and Violence Against the Girl Child Florence' (Italy, 25-28 September 2006).

<sup>41</sup> Rome Statute of the International Criminal Court, at Article 7(1)(g): '*forced pregnancy*' as the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

<sup>42</sup> See Declaration and Programme of Action, UN World Conference on Human Rights (adopted in Vienna on 25 June 1993) A/Conf.157/23 [38] on 'The equal status and human rights of women'.

<sup>43</sup> SLTRC Report (n 2) 131 [185]

<sup>44</sup> CEDAW General Recommendation No 24 on Health, A/54/38/Rev.1 [12] See also Rebecca J Cook 'Article 12' in Freeman et al. (n 12) 316.

<sup>45</sup> Ibid [14] 319.

<sup>46</sup> Corte Constitucional de Colombia (10 May 2006) C-355/06 s 7, cited in Freeman et al. (n 12) 319.

<sup>47</sup> Offences against Persons Act 1861, s 58.

Another common form of violation in Sierra Leone was categorised by the SLTRC as enforced sterilisation; the ICC's definition of enforced sterilisation, which states '*that the perpetrator deprived one or more persons of biological reproductive capacity*' and '*the conduct was neither justified by the medicine or hospital treatment of the person or persons concerned nor carried out with their genuine consent*', was followed in the report.<sup>48</sup>

In Sierra Leone the violations committed against women included 'removal of foetus, uterus, castration, destruction of reproductive organs, as well as medical sterilization without consent',<sup>49</sup> as well as acts of mutilation resulting in disembowelments. The TRC argued that these offences were gruesome, cruel, and inhumane. This is borne out by critically analysing the situation from the testimonies of the victims in Sierra Leone. For example, in the Commission report, an eyewitness account revealed the following:

*At Christmas time, I decided to spend it in the village of Konima since that was my husband's home. About morning time, the RUF attacked the village; I escaped, but they killed several people... An old blind woman was given cassava to eat; they (RUF rebels) caught her and beat her to death... Mariama Kalilu was a pregnant woman... When they met her in the room, they split her stomach open and abandoned her until she completely decomposed.*

The focus group discussions that took place in Makeni also affirmed the prevalence of this form of violation.<sup>50</sup> It can thus be argued that the systematic form of disembowelments or pregnancy removals that took place in Sierra Leone were beyond the above definition of sterilisation, given that most of the victims never survived the experience. While it is agreed, for instance, that by disembowelling the woman, the perpetrator has denied her of her biological capacity in a manner

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<sup>48</sup> SLTRC Report (n 2) 132 [186]. It includes acts committed upon women including during the war in Sierra Leone, such as the removal of foetus, uterus, castration, and destruction of reproductive organs, as well as medical sterilisation without consent.

<sup>49</sup> *ibid* [187].

<sup>50</sup> Interview with Focus Group (Makeni, Sierra Leone, April 2010).

that is not justified medically or otherwise, the woman is also subjected to mutilation and torture, and oftentimes this act results in the killing of both mother and child.

The ICC described the elements of mutilation as a war crime as circumstances where:

*The perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage, and the conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person or persons.*<sup>51</sup>

This thesis contends that there is a need to critically address this form of violation under international law, so as to give it a proper definition. There is historical precedence for this position, given that the practice of enforced sterilisation and castration can be traced back ‘to ancient times with ancient Persian murals showing triumphant warriors marching along bearing plates piled high with their enemy’s penises’.<sup>52</sup> The former Yugoslavia had one of the highest incidences recorded of this form of violation, particularly against men. In the case of mutilation of women – in particular ‘disembowelment’, which specifically targets the female uterus – one can argue that it is a gender-based crime. Pregnancy is a function of the woman’s body and men do not have a uterus; thus, violations of this form can only be targeted against women.

Reproductive crimes like enforced sterilisation, forced pregnancy, and sexual mutilation have become common features during wartime. The prevalence of parts of women’s bodies like

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<sup>51</sup> Article 8(2)(c) (i) of Rome Statute.

<sup>52</sup> Sandesh Sivakumaran, ‘Sexual Violence Against Men in Armed Conflict’ (2007) 18:2 *EJIL* 253–276.

breasts being cut off, fetuses ripped out of their mother's bodies, and other violent manifestations affirm the fact that war crime has become 'sexualised'.<sup>53</sup>

## **Liberia**

In analysing the war's consequences for women and girls, the Liberian report showed that women's violations were at their highest ebb during the 1990, 1994, and 2003 crises. It further showed that while there were higher numbers of men that experienced killing, assault, torture, forced labour, and forced recruitment, women were targeted in large numbers for rape, sexual violence, and sexual slavery and older women and young girls of 15-19 years bore the brunt of the war.<sup>54</sup>

The report also acknowledged that beyond the particularity of sexual violence, women, like men, were subjected to a range of other human rights violations. Women were particularly subjected to forced labour and were forced to witness others being tortured, killed, and abused.

Unlike the Sierra Leone Report, the Liberia women's report failed to provide comprehensive definitions of the different offences. It created six categories of the violation experiences of women and girls: forced recruitment, forced labour, sexual violence, rape, sexual slavery, and sexual abuse. The report showed that by 2003, women constituted the highest number of internally displaced people, and that these women were exposed to rape, sexual abuse, and

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<sup>53</sup> Kelly D. Askin, 'The Quest for Post Conflict Gender Justice' (2002-2003) 41 *Colum. J. Transit'l L* 512; see also Susan Brownmiller, *Making Women's Bodies Battlefields in Mass Rape: The War Against Women in Bosnia-Herzegovina* (Stigmayer 1994).

<sup>54</sup> LTRC Report, vol 3, 29.

prostitution in camps, as well as robbery, harassment and intimidation. Women's accounts showed that, particularly for girls under 18, a large number of females were sexually exploited by soldiers, humanitarian workers, and non-governmental organisations. The report estimated that at the camps, at least twenty girls suffered rape per week. While noting the pernicious offenses committed against women and internally displaced persons (IDPs) by humanitarian workers, Askin has proposed the need 'to establish procedures and mechanisms to punish perpetrators and prevent future violation'.<sup>55</sup> In Liberia in 2002, the government adopted a Declaration for the Protection of the Liberia internally displaced persons (IDPs).<sup>56</sup> Over 500,000 people were reportedly internally displaced, and the Declaration noted in its preamble that large numbers of women and girls in IDP camps were victims of sexual gender-based violence (SGBV) perpetrated by a cross section of camp and non-camp residents; as such, the issue deserves urgent attention.<sup>57</sup>

Over 17 million Africans are reported to have been displaced.<sup>58</sup> Given the gravity of the displacement, in 2009 the African Union adopted a convention to protect and assist internally displaced persons, based on the UN Guiding Principle on Internally Displaced Persons.<sup>59</sup> Prior to this, the Great Lake Region adopted a Protocol on Internally Displaced Persons.<sup>60</sup> Research

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<sup>55</sup> Askin (n 53) 149.

<sup>56</sup> Government of Liberia; Declaration of the Rights and Protection of Liberian Internally Displaced Persons (2002) <[http://www.brookings.edu/~media/Projects/idp/Liberia\\_Declaration\\_2002.PDF](http://www.brookings.edu/~media/Projects/idp/Liberia_Declaration_2002.PDF)> accessed 17 August 2011.

<sup>57</sup> See the Preamble of the Declaration.

<sup>58</sup> See Andrew Solomon, 'African Union and Convention for the Prosecution and Assistance of Internally Displaced Persons in Africa; Introductory Note' (2010) 49:1 *International Legal Matters* 83-100.

<sup>59</sup> African Union Convention For The Protection And Assistance Of Internally Displaced Persons In Africa (Kampala Convention) (adopted by the Special Summit Of The Union, Held In Kampala, Uganda, 23rd October 2009) <[http://www.Africa-Union.Org/Root/Ar/Index/Convention%20on%20idps%20\\_Eng\\_%20-%20final.Pdf](http://www.Africa-Union.Org/Root/Ar/Index/Convention%20on%20idps%20_Eng_%20-%20final.Pdf)> accessed 12 August 2012.

<sup>60</sup> Protocol on the Protection and Assistance to Internally Displaced Persons (Great Lake Region Protocol) 30 November 2006, <<http://www.internaldisplacement.org>> accessed 12 August 2012

shows that almost half of the population of Sierra Leone was displaced;<sup>61</sup> thus the Sierra Leone Peace Agreement, which was signed in July 1999, specified the need for designing and implementing a plan for voluntary repatriation and reintegration of Sierra Leonean refugees and internally displaced persons.<sup>62</sup> In October 2001, Sierra Leone also adopted a Sierra Leone Resettlement Strategy, whose purpose is to support the displaced to rebuild their lives back in their communities with safety and dignity.<sup>63</sup> The strategy specifically provides for vulnerable groups, which it categorises as female-headed households; pregnant and lactating women; separated and abducted women; and others, such as orphans, the elderly, and amputees.<sup>64</sup> However, the effect of all these policies in the life of the people is yet to be known.

*b. Non-Sexual Violations*

In the two reports, less attention was given to discussing non-sexual violations that occurred against women than was given to crimes of sexual violence. This gives the impression that the non-sexual offences were not as important to women as the sexual ones.<sup>65</sup> While no clear reason can be adduced for this gap, one wonders whether the TRCs adopted the stereotypical point of view that the only women's situation that needs be addressed in armed conflict is their sexual violability. The argument here is not that sexual offences in war do not deserve attention, but that women, first and foremost as members of society, are victims of war just like men, and generally suffer all the forced displacements, abduction, and loss of property that men do; in some circumstances more so.

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<sup>61</sup> See Brookings Project on Internally Displaced <[http://www.brookings.edu/projects/idp/Laws-and-Policies/sierra\\_leone.asp](http://www.brookings.edu/projects/idp/Laws-and-Policies/sierra_leone.asp)>accessed 9 September 2011

<sup>62</sup> Article XXII, Lome Peace Accord 1999.

<sup>63</sup> Sierra Leone Resettlement Strategy (2001), <<http://www.docstoc.com/docs/39846319/SIERRA-LEONE-RESETTLEMENT-STRATEGY>>accessed 12 August 2012.

<sup>64</sup> *ibid.* 9.

<sup>65</sup> Sivakumaran (n 52) 263.



The best option for the TRCs would have been to ensure as detailed an understanding of the other non-sexual offences as possible to bring out the gendered dimension in non-sexual offences, and to thus combat the stereotype that women are just spoils of war.<sup>66</sup> This would reduce the perception of women as only victims of conflict and show that women can also suffer other forms of violence as a result of war.

*c. Women as combatants*

The stereotypical approach of the SLTRC becomes more apparent when it states that women who participated in the war as perpetrators were ‘compelled to become perpetrators in order to survive...they made choices of staying alive, looking after loved ones, protecting and assisting others’.<sup>67</sup> Recently in the Rwandan traditional Court, *Gacaca*, in South Western Rwanda, however, 27 women who were accused of taking part in the 1994 genocide were thrown in prison.<sup>68</sup>

While the Sierra Leone report was not consistent about the role that women played in the war, the Liberia TRC report affirmed that women actively participated as combatants and perpetrators in the war, with a large number voluntarily joining for the ‘same reasons as male recruits’.<sup>69</sup> Some joined as combatants, while others served as nurses, sex workers, or cook messengers for the armed groups. However, the majority joined because it was a matter of ‘kill or be killed’.<sup>70</sup>

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<sup>66</sup> *ibid* 259.

<sup>67</sup> SLTRC Report (n 2) 136 [202].

<sup>68</sup> Hironelle News Agency, ‘Rwanda: Twenty Seven Women Convicted for Genocide’ (20 August 2009) <<http://allafrica.com/stories/200908210286.html>> accessed 29 May 2011. They were found guilty of having stoned to death several Tutsis who had sought refuge in the parish church of Kagano.

<sup>69</sup> LTRC, vol 3,48.

<sup>70</sup> *ibid* 48.

While the field study testimonies show that some women were conscripted into the rebel forces, in both countries some women also admitted joining the rebel forces voluntarily to defend their homes and families. According to one interviewee:

*I was hiding in the bush, when some people took me and forced me to join them, they gave me arms and taught me how to fire the gun, my mother who was with me in the bush was looking for me and crying for me, I was like 9 years old...I was with Charles Taylor group, I saw my friends died, about three girls died that were with us as rebel forces, I went through a lot of horrible experiences, I was in Foya and other places I was made to ferry rope across the river, I was made to smoke marijuana, and other hard drugs, I was small, I was there for 8 months, when I returned I was rejected by my people.<sup>71</sup>*

Another woman, who was in the rebel forces, experienced rape, was used as a spy, and carried a gun, had this to say:

*I was in Kakata County when the war broke out, I went to the bush where we had no food and I had a son I had to feed, some of my friends were befriending the rebels and were bringing home food, I decided to go with them, then I was captured and forced to join, I was initially used as a spy on the other side, I played wives to the enemies at some time, but later they decided to give me arm, I had my first experience the first day, I held the gun, a young boy was coming towards me, since I have been told that anybody coming towards me should be shot, I shot at the boy and he died, I was afraid...I was 18 when I joined, I used to man the check points, I used to be high on drugs, they call me 'walkie sleepy', I fought the war at different locations and participated like men.<sup>72</sup>*

Another interviewee said:

*I was at home one day in my uncle's house where I used to live, when the rebels from Charles Taylor side came into our house and killed my uncle, my sole benefactor, I felt very bad and in order to defend myself and protect other members of my family, particularly the children he left behind, I decided to join the LURD and became a member of the rebel force.<sup>73</sup>*

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<sup>71</sup> Interview with Emie (pseudonym) (Monrovia, Liberia January 2012).

<sup>72</sup> Interview with Cody(pseudonym) (Monrovia, Liberia January 2012).

<sup>73</sup> Interview with Mammie (Monrovia, Liberia January 2012).

The perception of women as only victims has changed over time; women are increasingly becoming ‘actors, enablers and even perpetrators’.<sup>74</sup> This thesis, however, recognises women and men as victims of war or armed conflict, while acknowledging that men still outnumbered women as perpetrators, and that patriarchal structures often influence women’s roles and choices. In order to fully understand what women do in armed conflict situations, Coulter notes that it is important to acknowledge that “‘women” is a highly differentiated category’; thus, women can be ‘active participants in war, supporters, advocates of continued armed struggle; they can be spies, soldiers, and rebels’.<sup>75</sup>

Women combatants and government officials have been tried for several offences, including war crimes, crimes against humanity, and genocide, which includes sexual violence.<sup>76</sup> The most recent were the 2011 convictions for Pauline Nyiramasuhuko (an ex- Minister of Women and Family Affairs of Rwanda) and Arsene Ntahobali at the ICTR.<sup>77</sup>

The LTRC Women and Armed Conflict Report also showed that killing represents about one fifth of the report. Men suffered more in this category of violation; however, women were made to witness the killings of their relatives, neighbours, friends, and loved ones. There were reports that while men were being killed, women were subjected to other forms of torture and violation such as sexual slavery, forced labour, and other types of sexual abuse. Men and women both suffered assault, but there were specific kinds of assaults against women: they were singled out

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<sup>74</sup> Askin (n 53) 513.

<sup>75</sup> Chris Coulter, ‘Female fighters in the Sierra Leone war: challenging the assumptions?’ (April 2008) 88*Feminist Review* 69.

<sup>76</sup> Askin (n 53) 513.

<sup>77</sup> *The Prosecutor v. Pauline Nyiramasuhuko et al.* (Judgment) ICTR-98-42-AR73 (2011). She was charged with war crimes, crimes against humanity and genocide before each of the Yugoslavia and Rwanda Tribunal; the charge included participating in common plan and sexual violence.

for savage beatings, stripped naked, and oftentimes had objects or hot peppers forced into their vaginas.<sup>78</sup> Women and girls were also targeted for abduction and forced cannibalism, forced to eat the flesh of their relatives, husbands or children as an act of punishment. There were also instances, particularly in Fish Town, where women were forced to sell their husbands' bodies as food.<sup>79</sup>

An expert report commissioned in Sierra Leone to analyse the incidence of violence during the war shows that out of the 6,054 incidents reported, women abductions constituted over 30%, and that the RUF was responsible for 65.3% of women's accounts and 59.3% of men's.<sup>80</sup> Another common form of violation was forced recruitment; there are no accurate figures for women's recruitment during the war, probably because they did not come out to testify due to stigmatisation. Another violation was detention. One of the reasons for detention was if a spouse or relative belonged to the opposing forces, such a woman would be accused and punished for the offences of her husbands or relatives. Women were beaten and tortured in several detention locations. Forced displacement was also seen as a major consequence of the war; women accounted for 37.3% of the victims affected.<sup>81</sup> The report notes that many women and girls suffered arbitrary killings, torture, and all kinds of assault, amputation, and forced cannibalism during the war, particularly lamenting the exploitation of those working as volunteer aids to support victims of violence.<sup>82</sup>

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<sup>78</sup> LTRC REPORT, vol 3, 38.

<sup>79</sup> *ibid* 39.

<sup>80</sup> Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leon; A Report by the Benetech Human Rights Data Analysis Group to the Truth and Reconciliation Commission (2004).

<sup>81</sup> SLTRC Report (n 2) 144.

<sup>82</sup> *ibid* 146.

The gender implications of all these violations are manifold. Testimonies show that women still live in fear, and due to the stigmatisation of women who suffered violence or who participated as rebels, they have not been fully reintegrated. There is a lack of effective mechanisms to respond to the conflict and the gendered dimensions of war, and this has left women helpless, even in post-conflict reconstruction. For example, one of the female combatants who complained of neglect and stigmatisation said, ‘people only see you as rebels, they don’t want to talk to you... some time ago I returned to school but I had to stop; when you talk in class they will call you rebel and if you report them what can they do?’<sup>83</sup> The report showed that apart from women insisting on accountability for perpetrators, they also call for the following: prosecution, amnesty for those who have told the truth, memorialisation, institutional reforms, reparation, and reconciliation.

#### *d. TRC Outcomes and Gender Justice*

Section 15(2) of the Sierra Leone Truth and Reconciliation Commission Act mandated the Commission to make recommendations concerning reforms and other measures in order to achieve the object of the Commission.<sup>84</sup> As one of the core mandates, section 6(2)(b) of the TRC is expected to ‘work to help restore the human dignity of victims and promote reconciliation’. While the SLTRC Act did not specifically mention reparation, the Commission uses its power to propose what the ‘government can implement’ to support the victims, from the combination of the above provisions. The Commission therefore identified the category of beneficiaries as

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<sup>83</sup> Interview with Mammie (Monrovia, Liberia, 12 January 2012).

<sup>84</sup> SLTRC Report, vol. 2: ‘Reparation’, 227. The objective of the Commission was summarised in the TRC report.

‘victims who were particularly vulnerable because of the human rights violations they suffered and the harm that they continue to live with’.<sup>85</sup>

The SLTRC Recommendations were divided into four categories: ‘imperative’, ‘work towards’, ‘serious consideration’, and ‘calls on’.<sup>86</sup> The SLTRC further recommended the need to overhaul the justice system, engender the laws, establish and strengthen institutions, introduce comprehensive reforms to protect human rights, establish security and the rule of law, promote good governance and reconciliation, and provide reparation for the victims.<sup>87</sup> The TRC Act required that the government take key responsibility in addressing the recommendations.<sup>88</sup>

The TRC recommendation touched on legal, political, cultural, and socio-economic aspects of life. It put peace building in a more holistic perspective, stressing that non-state actors, foreign governments, civil society, and the international community all have roles to play in achieving peace in Sierra Leone.<sup>89</sup> Specifically, it classified the following recommendations as imperative: repeal of all statutory laws and customary laws discriminatory against women, and in particular, laws on citizenship; and rape laws, particularly the Protections of Women and Girls Act,<sup>90</sup> which deal with the moral character of complainants when prosecuting a case of rape. Cook and Cusack<sup>91</sup> note that this form of discriminatory law continues to impede on women’s participation in public life. Under Article 2 (f) of the CEDAW oblige, state parties are obliged to take all measures to ‘modify or abolish existing laws, regulations, customs and practices which constitute

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<sup>85</sup> *ibid* 229.

<sup>86</sup> SLTRC Report (n 2) 119.

<sup>87</sup> *ibid* 116-225.

<sup>88</sup> Section 17 of the TRC Act.

<sup>89</sup> SLTRC Report (n 2) 121,

<sup>90</sup> Protection of Women and Young Girls Act Laws of Sierra Leone (1960)

<sup>91</sup> Rebecca J. Cook and Simone Cusack, *Gender Stereotyping: Transitional Legal Perspectives* (University of Pennsylvania Press 2010) 2.

discrimination against women'.<sup>92</sup> Most of the laws were influenced by gender stereotypes, which pose a major challenge to advancing women's rights. Holding the government accountable for making the provisions of CEDAW and the AU Protocols a practical reality will help women coming out of conflict achieve the full enjoyment of their rights.

Moreover, as a matter of imperative, the SLTRC called for a review of the national constitution and citizenship laws and the abolition of the practice of expelling pregnant girls from schools, and launched a campaign against compelling victims of rape to marry the offenders. Legal reform is a critical tool for gender justice post-conflict; an adequate legal system can support a survivor who lives in fear of going through the same form of victimisation that she experienced during the war.<sup>93</sup> A recent study showed that laws protecting women against gender-based violence are a priority for women coming out of conflict.<sup>94</sup> Good examples include the Liberia Penal law<sup>95</sup> and the new rape law in the DRC.<sup>96</sup>

Ultimately, legal reform is desirable, but as Duggan and Jacobson note, the problem is 'moving from codification to implementation'.<sup>97</sup> Without this, the story of victimisation continues, even in the aftermath of war. For example, with respect to the DRC, the CEDAW Committee has expressed concern that sexual violence against women continued even in the aftermath of war,

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<sup>92</sup> General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women CEDAW/C/2010/47/GC [31]. See also Andrew Byrnes 'Article 2' in Freeman et al. (n 12) 71-97.

<sup>93</sup> Collen Duggan and Ruth Jacobson, 'Reparation of Sexual and Reproductive Violence' in Ruth Rubio-Marin (ed), *Gender of Reparations: Unsettling Sexual Hierarchies while redressing Human Rights Violation* (Cambridge University Press 2009) 160.

<sup>94</sup> Brandon Hamber et al., 'Discourses in Transition; Re-imagining Women Security (2006) 20.4 *International Relations* 499.

<sup>95</sup> Liberia Penal Law 2006, ch 14, s 14.70 (an act to amend the new penal law and to provide for gang rape).

<sup>96</sup> Democratic Republic of Congo 'Code Pénal Ordinaire and Amendments' Law no. 06/018, July 20, 2006, modifying and supplementing the Code of Criminal Procedure of January 30, 1940. See also Article 15 of the Constitution of Democratic Republic of Congo (2006)

<sup>97</sup> Duggan and Jacobson (n 93) 161.

calling on the government to end impunity.<sup>98</sup> Associated with the repeal of laws is also the imperative for legislation on domestic violence and national campaigns to break the silence around rape. The CEDAW committee has particularly addressed the issue of domestic violence as violence in the family through General Recommendation 19, where it states that:

...under article 2(e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.<sup>99</sup>

It therefore requested that state parties report on the extent of domestic violence and sexual abuse, and on the preventive, punitive, and remedial measures that have been taken.<sup>100</sup> The Optional Protocol has been utilised by individuals to bring cases before the Committee.<sup>101</sup> For example, in the case of *Ms AT v Hungary*, 'the Committee found that the fact that the State was not effective in responding to the violence against the complainant by her husband constituted violations of Article 2 (a), (b) and (e), 5(a)'.<sup>102</sup> The Committee further linked this to Article 16. In 2007, the Sierra Leone Government enacted a domestic violence law;<sup>103</sup> however, its effect in responding to the situation of women still remains in doubt.

Since 1975, there have been efforts to encourage political parties and government to adopt a gender quota to increase female representation. This is often achieved through political parties,

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<sup>98</sup> Christine Chinkin, 'Violence Against Women' in Freeman et al. (n 12) 462, citing CEDAW, Concluding Observation on DRC (2006) CEDAW/C/COD/CO/5.

<sup>99</sup> General Recommendation No 19 on Violence Against Women (1992) UN A/47/389 [9].

<sup>100</sup> *ibid* [24].

<sup>101</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women A/RES/54/4 15 October 1999 Fifty-fourth session Agenda item 109.

<sup>102</sup> Communication No.: 2/2003, *Ms. A.T. v. Hungary* (adopted on 26 January 2005, thirty-second session).

<sup>103</sup> Domestic Violence Act No 20 of 2007.



enabling acts, or gender-friendly electoral systems.<sup>104</sup> Over 40 countries throughout the world have introduced gender quotas, with over 50 using quotas in major political parties' statutes; they have thus become a valuable instrument for increasing the representation of women.<sup>105</sup> CEDAW General recommendation No. 5 temporary special measures (1998) recommends that States Parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment. The recommendation compliments the UNSCR 1325 for the increase in the representation of women in decision-making.

In line with this school of thought, the SLTRC recommended a policy requiring political parties to ensure at least 30% representation to increase the number of women in politics. It also encouraged the government and others to work towards achievement of 50/50 parity, with targets of at least 30% in cabinet and political positions within ten years.<sup>106</sup> The call for parity is significant given the commitment of the African Union (as suggested by the Solemn Declaration on Gender Equality in Africa 2004),<sup>107</sup> and the fact that Sierra Leone has signed and ratified the CEDAW and signed the AU Women's Protocol, which expressly calls for affirmative action and temporary special measures<sup>108</sup> to increase women representation.

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<sup>104</sup> Miki Caul, 'Political Parties and the Adoption of Candidates Gender Quota; A Cross National Analysis' (2001) 63.4 *The Journal of Politics* 1214-1229.

<sup>105</sup> See also on quota or temporary measures: Committee on Economic Social Cultural Rights 'General Comment No 16 on the Equal Rights of men and women to the Enjoyment of All Economic, Social and Cultural Rights' (2005) UN /Doc. E/ C.12/2005/4 [15].

<sup>106</sup> SLTRC Report (n 2) 174.

<sup>107</sup> Solemn Declaration on Gender Equality in Africa 2004 (SDGEA) Assembly of Heads of State and Government of the African Union Third Ordinary Session, (6-8 July 2004, Addis Ababa), Ethiopia Assembly/AU/Decl. 12 (111) Rev. 1.

<sup>108</sup> Draupe Dahlerup and Lenita Freidenvall, 'Quotas as a 'fast track' to Equal Representation for Women; Why Scandinavia is no longer the model' (2005) 7.1 *International Feminist Journal* 26-48.

Likewise, the SLTRC recommended immediate ratification of the Protocol to the African Charter on Women's Rights.<sup>109</sup> Sierra Leone signed the AU Protocol in 2004, yet it has failed to ratify or translate it into national law. The Protocol can potentially support accountability, particularly for a country coming out of conflict; failure to ratify it raises questions about the commitment of the State to promoting women's rights in a real sense.

Another important recommendation with specific reference to women in post-conflict Sierra Leone was the President's public apology and the acknowledgement by all political party leadership of violations against women.<sup>110</sup> An official apology as a post-conflict mechanism was one of the recommendations put forth by Ghana and Timor Leste's TRCs.<sup>111</sup> This was critical given the atrocities committed against women during the war. However, in the field interviews in Sierra Leone, the opinion of most interviewees was that while public apologies are desirable, they do not alleviate the post-war poverty that they suffer.<sup>112</sup> Still, symbolic reparations of this nature may have multiple meanings in different cultural contexts.<sup>113</sup> For example, the 'comfort women'<sup>114</sup> refused to accept monetary compensation without an official public apology from the Japanese government, which had hitherto denied their wartime expenses. The SLTRC also recommended improved access to justice and legal aid for women. The CEDAW Committee in Article 2(c) encouraged appropriate remedies to ensure the protection of women; thus, through

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<sup>109</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (July 11, 2003) OAU Doc. CAB/LEG.

<sup>110</sup> SLTRC vol 2,168 [317].

<sup>111</sup> Duggan and Jacobson (n 93) 151.

<sup>112</sup> Focus group discussion (Makeni, Liberia, April 2010).

<sup>113</sup> Duggan and Jacobson (n 93) 150.

<sup>114</sup> *ibid* 151.

General Recommendation 28,<sup>115</sup> the CEDAW Commission emphasised that effective protection under Article 2(b) includes access to court and free legal services.<sup>116</sup>

There are many similarities in the recommendations proffered by the Sierra Leone and Liberia TRCs. Some of the key recommendations in the Liberian LTRC report included: a public apology – not to women, but to the people of Liberia and other governments whose nationals supported Liberia in the course of the war;<sup>117</sup> legal reform; free education for survivors;<sup>118</sup> free comprehensive health care for victims; and proposed rehabilitation centres. These recommendations are particularly important – in Liberia, women represented more than 20% of the fighting forces. Furthermore, the Commission recommended micro credits, medical needs, child assistance, and the establishment of *Palava Hut* in the community to support traditional justice systems. In Rwanda, an alternative judicial response was the *Gacaca* court, which, though dating back to colonial Rwanda, provides opportunities for Rwandan people to move forward in their bid to reconciliation through a community-based justice system.<sup>119</sup> The *Palava Hut* proposed in Liberia has the same objective.<sup>120</sup> The Commission report also called for cooperation and the domestication of CEDAW.<sup>121</sup>

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<sup>115</sup> General Recommendation No 28 ‘The Core Obligations of States Parties under Article 2 of CEDAW’ 2010 CEDAW/2010/47/GC.2 [32].

<sup>116</sup> *ibid* [24(t)(i)].

<sup>117</sup> LTRC vol 2, 398.

<sup>118</sup> *ibid* 379.

<sup>119</sup> Timothy Longman, ‘Justice at the grassroots? Gacaca trials in Rwanda’ in Naomi Roht-Arriaza and Javier Mariezcurrena (eds), *Transitional Justice in the Twenty-First Century; Beyond Truth versus Justice* (Cambridge University Press 2006) 31.

<sup>120</sup> Another example is the East Timor Community Reconciliation Process.

<sup>121</sup> LTRC, vol 2, 387

## Reparation

Pablo De Greiff points out the need to link reparation with other transitional justice measures; he argues that failure to create this nexus could harm the reparation programme.<sup>122</sup> Relating reparation to other measures of institution-building post-conflict, changing the law, improving the security sector, and other reforms support the victim and make society more habitable. Thus, the reparation programme, while playing its modest role at rebuilding, must also help the victim defend her right to stabilise in society.

Reparation is critical to women; thus, in General Recommendation 28 the CEDAW Committee emphasised the need for State Parties to ensure remedies, including reparation to women whose rights have been violated, monetary compensation, rehabilitation, reinstatement, public apologies and public memorials, amongst others.<sup>123</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, article 10 states:

Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

The Liberian Peace Agreement<sup>124</sup> states that the transitional government shall accord particular attention to the issue of the rehabilitation of vulnerable groups or war victims (children, women,

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<sup>122</sup> Pablo De Grief, *The Handbook of Reparation* (Oxford University Press 2006) 3

<sup>123</sup> CEDAW GR 28 [32].

<sup>124</sup> Article XXXI (i) 'Vulnerable Group' Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties, (Accra, 18 August 2003).

the elderly and the disabled) within Liberia, who have been severely affected by the conflict there. Thus, the LTRC report proposed individual and collective reparation in order for the government to fulfil its responsibility under international law. The LTRC recommended approximately USD 500 million spanning a 30 implementation period, with the caveat that within the first five years all direct victim support programmes must be implemented, including memorials, victim support, and the prosecution process.<sup>125</sup>

The SLTRC also recommended reparations in line with its obligations under the Act.<sup>126</sup> It proposed that the National Commission for Social Action (NASCA) recommend reparations to deal with victims' needs in the following areas: 'health pension, education, skills training, micro credit, community reparation and symbolic reparation'.<sup>127</sup> In addition, 'victims who were particularly vulnerable to suffering human rights violations' were to be given priority in the reparation programs; these included amputees, war wounded, women who suffered sexual abuse, children, and war widows as special categories of victims in dire need of urgent care.<sup>128</sup>

Victims of sexual violence were defined 'as those women and girls who were subjected to such acts as rape, sexual slavery, mutilation of genital parts or breasts, and forced marriage. To the extent boys and men suffered from sexual violence, they will also be beneficiaries of this programme.'<sup>129</sup> The Commission did not apply the reduction of earning capacity test to victims of sexual violence because the harm suffered cannot be quantified. Like the comprehensive categorisation in Timor Leste, the SLTRC identified the mutilation of genitals or breasts, forced

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<sup>125</sup> LTRC vol 2, 378.

<sup>126</sup> Section 15 (2).

<sup>127</sup> SLTRC 193 [484]

<sup>128</sup> *ibid* 234 [28].

<sup>129</sup> *ibid* 250.

marriage, rape, and sexual slavery as sexual violence.<sup>130</sup> For these categories of people, the TRC recommended medical assistance,<sup>131</sup> including surgery, HIV/AIDS testing, and testing for sexually transmitted diseases.<sup>132</sup> The SLTRC also recommended that relatives of victims could benefit, for example relatives of victims of sexual violence.

The Commission also recommended that the war wounded and amputees be provided with free physical health care services throughout their lives. Other benefits included health care, pension, education, surgery, and that all adult amputees who experienced a 50% or more reduction in their earning capacity,<sup>133</sup> as well as victims of sexual violence, were entitled to a monthly pension of not less than LE 60,000 (USD 20).<sup>134</sup> This was the same for war widows and other categories benefiting from pensions; however, the category did not include widowers.<sup>135</sup> This might be because it is often assumed that widowers are the breadwinners; this perception is stereotypical and may be incorrect in the context of war.

The Commission also recognised the role that women play in the family, and therefore recommended that immediate relatives of the amputees such as wives, husbands, and children under the age of eighteen also be eligible to receive the health care programme; however, no monetary compensation was available for the women who support the amputees.<sup>136</sup> Positive considerations and preference for categories of vulnerable women in micro credit and other skill

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<sup>130</sup> *ibid* 250 [96].

<sup>131</sup> *ibid* 235.

<sup>132</sup> *ibid* 235 [150].

<sup>133</sup> *ibid* 248.

<sup>134</sup> *ibid* 259.

<sup>135</sup> *ibid* 250 [97].

<sup>136</sup> *ibid* 253.

acquisition training were also endorsed.<sup>137</sup> The Commission likewise recommended one national war memorial and other memorials in other parts of the country, community reparations to alleviate poverty, as well as the establishment of reconstruction and rehabilitation programs for communities affected by war.<sup>138</sup>

However, the implementation has been very poor. According to one interviewee on the implementation of the TRC report:

*The victims do not have people to help them and even the stigma militates against them but the perpetrators have Godfathers backing them. No justice is given and there is need for immediate action to be taken, stringent actions be taken as the cases (offenders) taken to court are freed and they come back to the community to pose a lot of threat. No justice was given to women.*<sup>139</sup>

This was further affirmed in an interview with one of the leaders of the TRC, who was also disappointed that the TRC recommendations had not been implemented. According to him,

*The manner the reparation is handled is not the right method. Improving justice for all government should be seen doing the right things and not pretending to do the right things. The international community should come together in every country and have a think tank review, justice must not be a selective one it should be all inclusive and justice is at the passage of time.*<sup>140</sup>

However, the National Commission for Social Action (NaCSA), the government agency in charge of implementing the recommendations of the TRC relating to reparations in Sierra Leone, claimed that much has been done to support women. According to a NaCSA official,

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<sup>137</sup> *ibid* 254.

<sup>138</sup> *ibid* 254.

<sup>139</sup> Interview with Suzie (Sierra Leone, April 2010).

<sup>140</sup> Interview with member of TRC (Sierra Leone, April 2010).

*NaCSA is the implementer of the TRC recommendation, and TRC came up with five categories: Amputee, sexually violated, widows, wounded, and children. 70% of this category is women; healthcare including trauma, counselling, VVF treatment and an educational trust fund have been put in place since then, and the intervention we render is not compensation but reconciliatory. As at today, 32,000 victims have been registered so far, with more of the numbers of people registered being widows, and about 1,000 amputees. We gave TRC 20,000 names of people including women; about 235 victims of VVF were treated, also 49 cases of victims with bullets from their body were removed last year and 12 people this year.*<sup>141</sup>

The interviewee also provided information about the grant NaCSA received from UNIFEM to train 600 women in different skills, though only 300 have benefitted so far. He said:

*[...] a market survey is ongoing to access the trade that would be beneficial to them. A Women-based NGO has been contacted and the victims undergoing the training would be given 150,000 loans and an off grant loan of 500,000 loans. The issue of skill training and micro grants for women is still in the vulnerable state; we intend to do more but we are more willing to work with real victims. The Northern Province has more rape cases and some of them are now in town and are not willing to come out.*

However, with respect to the outcome of the report, the government has failed to keep its promise to implement the recommendation. Another member of the SLTRC further affirmed this: ‘...there are recommendations of the TRC that should be addressed to bring true development in the country, e.g. 10% of youth involvement in politics and 30% inclusion of women in politics but none of this is met’.<sup>142</sup> He lamented the fact that the TRC report has not been fully implemented.

As Schabas notes, the economic situation of Sierra Leone remains critical, and any programme involving financial commitment from the government would need wider support from the

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<sup>141</sup> Interview with NASCA official (Sierra Leone, April 2010).

<sup>142</sup> Interview with member TRC (Sierra Leone, April 2010).



international community.<sup>143</sup> This is, however, no excuse: ‘the duty of States parties to protect the vulnerable members of their societies assumes greater rather than less importance in times of severe resource constraints’.<sup>144</sup>

The true goal of reparation is to support the building of a democratic society, and a programme that fails to integrate women weakens this developmental link.<sup>145</sup> In both countries, given the enormous sex crimes that took place during the war, it would have been expected that the call for legal reforms would address issues like proposals for decriminalisation of abortion, reparation for children born out of wedlock or children of rape victims, and laws legitimising such children born during the war. According to Chinkin, ‘women’s legal status may be controversial; for example, women who were abducted and became ‘bush wives’ may be considered as having been married and thus as having consented to sexual intercourse with their ‘husband’; or alternatively they may be considered as victims of detention and rape. The legal (and personal) situation may be more complex where there are children of the relationship, for example with respect to property rights’.<sup>146</sup> Furthermore, Marzuna and Carlson point out that the experiences of girls are different from those of women; it is important to particularise the situation of girls in reparation of this nature.<sup>147</sup>

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<sup>143</sup> William Schabas ‘The Sierra Leone Truth and Reconciliation Commission’ in Roht-Arriaza and Mariezcurrena (n 119) 31.

<sup>144</sup> Committee on Economic Social Cultural Rights, ‘General Comment 3; The nature of States Parties Obligation’ (Article 2(1) of the Covenant Fifth Session 1990), UN DOC E/1991/23 Annex III [12].

<sup>145</sup> Rubio–Marin (n 93) 3.

<sup>146</sup> Christine Chinkin, ‘The Protection of Economic, Social and Cultural Rights Post-Conflict,’ paper series commissioned by the Office of the High Commissioner for Human Rights (2009) 15

<[http://www2.ohchr.org/english/issues/women/docs/Paper\\_Protection\\_ESCR.pdf](http://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf)> accessed 10 August 2012.

<sup>147</sup> Dyan Mazurana and Khristopher Carlson, ‘Reparations as a means for recognising and addressing crimes’ in Rubio–Marin (n 93) 171.

Similarly, the recommendations in both countries did not address reintegration of refugees and the displaced adequately. Article 2 of the Great Lakes Protocol<sup>148</sup> presents a good model, laying down principles that are significant for post-conflict reformulations. For example, they address issues on the return of refugees; recovery of property; special protection for returning women, children, and communities with special attachment to land; legal remedies for the loss or destruction of the property of IDPs and refugees; and persons resettled or relocated elsewhere.

*e. Understanding Gender Justice from the Victims' perspectives*

The form of justice and redress that would respond to women's situations remained a critical question for all the interviewees. The responses included prosecution, economic empowerment, greater access to justice for women, more enabling environments, and justice through retaliation. For example, Susan, who was captured, used as a slave, and later had her hands cut off, said 'I am not happy with what these people have done to me, I want them to be punished'.<sup>149</sup> Madine, who was beaten, raped, held as a bush wife, and lost her brother when he came to rescue her, said: 'I have lost everything that I have. Justice is how to get them back'.

Akisha, who was a victim of several rape experiences, lost her parents, and was commercial sex worker, gave a broader definition of justice: '...let them support me with work, I want to learn, I can forgive the people who turn me to someone who has nobody. Justice is not forgiveness to me.' This was in response to the government apology to the women victims of Sierra Leone.

However, Adata, another victim of rape, raised the question of inequality in the justice

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<sup>148</sup> Article 2 International Conference on the Great Lakes Region Protocol on the Protection and Assistance to Internally Displaced Persons (30 November 2006). See also Chaloka Beyani, 'Recent Developments the elaboration of a legal framework for the protection of internally displaced persons in Africa' (2006) 50 *Journal of African Law* 187-197.

<sup>149</sup> Interview with Susan (pseudonym) (Sierra Leone, April 2010).

arrangement. In her view, ‘although there is now peace, the perpetrators have been taken care of, while the victims of war are still suffering the effect, so I want compensation for all victims of the war.’ This is the form of compensation that, as Malewa said, will allow her to ‘get her life back’.

In Liberia, on the other hand, most victims expressed a desire to go back to school, and the need for the government to compensate them to make their lives meaningful. They also took issue with the lopsided manner with which the government handled compensation; it focused more on the men who carried the arms and neglected the women who suffered different degrees of violence. As Amy said, ‘The government did not do well; they should have sent us to school’.<sup>150</sup>

Cadijat feels the same way:

I just feel abandoned, I live on the street in the ghetto, I sell my pride every blessed night, when the night come, I feel my day has broken...I don't even have a place to sleep. Justice to me, is for the government to get me a programme that will empower me, I mean ‘us’; some of us can go back to school, let me learn something and be de-traumatized ... I can't continue to live with this trauma.<sup>151</sup>

Justice is beyond the courtroom – women in Sierra Leone and Liberia have described justice in broader terms of getting their lives back. One major challenge for Liberia and Sierra Leone is the lack of an adequate budget for gender and development issues. The oral testimonies of most policy makers reveal frustration over the government’s budget allocation to gender issues, even though the government has ratified the Protocol to the Rights of Women in Africa, which puts obligation on the government to financially support the promotion and protection of women’s

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<sup>150</sup> Interview with Amy (pseudonym) (Monrovia, Liberia, January 2012).

<sup>151</sup> Interview with Cadijat (pseudonym) (Monrovia, Liberia, January 2012).

rights.<sup>152</sup> Most post-conflict reforms and initiatives are not linked to accountability for past violations; this affirms the fact that, the war was not only a war but also a conflict between patriarchies and established power structures with obvious adverse effects for women.

One major challenge is that Sierra Leone and Liberia are poor countries; the resources available might not be enough to support victims' compensation. For example, in Sierra Leone as of April 2009, the government only had 25% of the resources to support victims<sup>153</sup> and had to prioritise who deserved to receive compensation that year; in such circumstances, women may not be the government's priority.

The TRC has not been able to achieve the desired gender justice for women post-conflict. It has failed to support a post-conflict arrangement that can address 'women's human rights in a more integrated fashion'.<sup>154</sup> For example, a critical assessment of the overall TRC report shows that gender issues were not properly mainstreamed in the recommendations.

Another important point concerning women's perception of gender justice is that it is focused on accountability through economic justice. While recognising that economic disparities between the two countries date far back in history, my fieldwork revealed that any meaningful post-conflict reconstruction must purposely and fully integrate gender in its economic development plan. As indicated by most interviewees, this would support increasing women's economic status to enable them get their 'lives back'.

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<sup>152</sup> Article 4(I) of the AU Protocol.

<sup>153</sup> Helen Scanlon and Kelli Muddell, 'Gender and transitional justice in Africa: Progress and Prospects' (2009) 9:2 *African Journal on Conflict Resolution* 9–28.

<sup>154</sup> Niamh Reilly, 'Seeking gender justice in post-conflict transitions: towards a transformative women's human rights approach' (2007) 3 *International Journal of Law in Context* 155-172.

Chinkin argues that economic and social rights are a core element of post-conflict reformulation and a prerequisite for sustainable peace based upon the rule of law, further stating that:

Delivery of economic and social rights is a post-conflict obligation which must be respected by those who assume positions of authority to facilitate the exercise of agency by conflict survivors in procedures for transitional justice and in personal and social reconstruction. Relief from the immediate demands for food, shelter and health needs creates space for survivors to speak for themselves and to take charge of their own concerns.<sup>155</sup>

The General Assembly, too, emphasises the need for comprehensive and holistic support for women who suffered abuses, to ensure ‘equal access to appropriate and adequate food and nutrition, clean water, safe sanitation, shelter, education, social and health services, including reproductive health care and maternity care’.<sup>156</sup>

### **3. Conclusion**

The thesis contends that armed conflict has changed the lives of women, with calamitous consequences on those of Liberia and Sierra Leone. The effect has further placed additional burdens on women’s financial power.

This chapter demonstrated that the interventions of the state with the TRCs have failed to address issues of socio-economic rights, and are thus incapable of addressing women’s most critical needs at post-conflict. The thesis further argues that the recommendations proposed by the

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<sup>155</sup> Chinkin (n 146) 12.

<sup>156</sup> Outcome Document: Further Actions and Initiatives to Implement the Beijing Declaration and Platform of Action(2000) GARes. S-23/2, UN GAOR, 23rd Special Sess., UN Doc. A/RES/S-23/3 [15].

TRCs are limited and incapable of supporting gender justice in a way that can subvert the hierarchies built by the system that has continued to exclude women's voices and access.

The thesis contends that women cannot benefit from reparation processes that are selective, discriminatory and fail to consider their particular needs. As the field work shows, social and economic justice matters to post-conflict reformulations, the recommendation of the TRC has failed to address this aspect appropriately.

Consequently, even with the guns silenced, women have been left to face a second victimisation, for an offence that they know nothing about. The war has left the indigent, widowed, prostitutes and illiterates with nowhere to go and no one to turn to. The TRCs in both countries have failed to meet the expectations of these women and as such compromised their quest for justice.

## Chapter Seven: Concluding Analysis

*“No wonder women often say, ‘War? Don’t speak to me of War, my daily life is battlefield enough’” — Cynthia Cockburn<sup>1</sup>*

### 1. Introduction

The preceding chapters examined the gender and armed conflict framework in Africa, illuminating the scope and depth of war on the continent and its deleterious effect on the enjoyment of basic fundamental rights and peaceful co-existence. This thesis has demonstrated that supporting justice for women is important to sustaining a lasting peace, and that an effective and legally binding framework is a solid foundational instrument to address the continued denial of women’s rights in armed conflict and thereafter. This thesis also contends that existing international humanitarian norms – as well as the Women, Peace and Security Resolutions by the United Nations Security Council – are inadequate to respond to the needs of women. It further demonstrated that there is a need to expand the present legal and institutional frameworks to address the question of socio-economic justice for women. The state’s failure to meet the basic needs of the people is clear; despite laws and institutions addressing some of women’s fundamental needs, failure to prioritise women’s political and material gains post-conflict has continued to limit their opportunities to ‘get their lives back’.

This chapter looks at the challenges emerging from the analysis of the three ‘Ps’: prevention, protection and participation. The following five sections focus on three key issues identified

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<sup>1</sup> Cynthia Cockburn, ‘The Continuum of Violence: A Gendered Perspectives on War and Peace’ in Ruth Rubio-Marin (ed), *The Gender of Reparations: Unsettling Sexual Hierarchies while Addressing Human Rights Violations* (Cambridge University Press 2009) 29.

from the fieldwork concerning state accountability towards promoting gender equality in post-conflict situations. The first part addresses resources, examining the state's obligations to address women's socio-economic rights – something lacking in the broader framework for peace and in domestic frameworks. The second part focuses on why the legal frameworks have failed to address the basic needs of women in conflict and the disconnect between the laws and realities. This thesis contends that addressing the manifestations of gender inequality requires more than handing down general laws or donor-driven legal reforms, which in reality fail to materialise or connect with the real life situations of women. Experiences in the two states show that failure to implement or enforce new laws post-conflict has implications for the culture of respect of women's rights. The third section focuses on the incapacity of the institutions to support post-conflict reconstruction and the long-term implications on related programmes, while the fourth examines the AU and the Women, Peace and Security agendas. The final section offers concluding remarks and proposes a way forward.

## **2. Feminisation of poverty: A continuum Post-Conflict?**

A major outcome of this research is the evidence from testimonies showing that there cannot be gender justice post-conflict if transitional mechanisms fail to deliver on their promises for women. Women's testimonies show that justice is about alleviation of poverty and equitable redistribution of resources to facilitate their quick recovery. Both international and government efforts focus on prioritising civil and political rights and ensuring that people who committed grievous atrocities are taken to task. However, the scars of war have created a vacuum in the lives of the women in the two countries examined, and until they 'get their lives back', poverty is a continuum of their experiences in conflict.



Poverty is endemic in both Sierra Leone and Liberia. The field and desk research showed that poverty has been commonly identified as one of the major issues preventing women's post-conflict transformation<sup>2</sup> and as a cause for war. Several studies have shown that poverty and resultant denial of rights, in particular socio-economic rights, are never conducive to peaceful co-existence; they are often responsible for violent conflict.<sup>3</sup> For Sierra Leone and Liberia, empirical studies have shown that mass poverty, inequalities, state collapse and other socio-economic factors contributed immensely to the armed conflict situations.<sup>4</sup> Sierra Leone is ranked in the United Nations Human Development Index at 158 out of 182 countries;<sup>5</sup> despite the country's outstanding mineral wealth, poverty still remains very high, with reports indicating that 54% live on less than a dollar a day and 74% on less than USD 2 a day.<sup>6</sup> Post-war Liberia recently saw significant growth in its economy largely boosted by international aid inflows; it grew by 9.4% in 2007, and double-digit growth was expected the following year.<sup>7</sup> This is impressive when compared with the forecast for Sierra Leone, whose growth rate is stagnant and remained at 6.8% as of 2007.<sup>8</sup> However, almost half the population of Liberia lives on less than a dollar a day,<sup>9</sup> and the majority of these people are women.<sup>10</sup>

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<sup>2</sup> Karen Barnes, Peter Albrecht and Mina Olson, 'Addressing gender based violence in Sierra Leone: Mapping Challenges for Future Entry Points' (August 2007) *International Alert* 16  
<[http://www.peacewomen.org/resources/Reconstruction/Rule of Law.pdf](http://www.peacewomen.org/resources/Reconstruction/Rule%20of%20Law.pdf)> accessed 2 July 2012.

<sup>3</sup> A. Mazuri, 'The African State and as a political refugee; institutional collapse and human displacement (Special Issue 1995) *International Refugee Law* 24.

<sup>4</sup> J.B. Laggah, J. Allie, and R. Wright, 'Sierra Leone' in A. Adedeji (ed), *Comprehending and Mastering African Conflicts: The search for Sustainable Peace and Good Governance* (Zed Books 1999) 174; see also A.L. Hassan Conteh et al., "Liberia" in Adedeji (n 4) 104.

<sup>5</sup> United Nations Development Programme, *Human Development Index (HDI) -2010 Rankings*. (2010)  
<<http://hdr.undp.org/en/statistics/>> accessed 8 July 2012.

<sup>6</sup> Central Intelligence Agency, *Sierra Leone: CIA World Fact book* (15 January 2010)  
<<https://www.cia.gov/library/publications/the-world-factbook/geos/sl.htm>> accessed 8 July 2012.

<sup>7</sup> See USAID Report, 'Liberia Economic Recovery Assessment' (July 2008) <<http://www.nathaninc.com>> accessed 3 July 2012.

<sup>8</sup> *ibid* 21.

<sup>9</sup> *ibid* 21.

About 70% of women in Africa are adjudged as living below the poverty line, which is equivalent to USD 1.25 a day, and while the proportion of poor Africans has decreased between 1990 and 2007, the number has risen in absolute terms.<sup>11</sup> Several factors have been identified as responsible for the extent of the feminisation of poverty in Africa, including patriarchy, women's lack of access to land and property, gender-based violence, corruption, mis-governance, and the fragility of the African State.<sup>12</sup> The effect of war has negatively affected the GDP per capita, labour productivity has been impaired, and incidences of corruption have increased, with the poor bearing the brunt of the impact.<sup>13</sup> As Wabwile observes:

Although the economic deprivation occasioned by poverty and underdevelopment in the poor regions of the world seriously degrades the quality of life of the affected communities, it does not necessarily destroy their freedom of cultural expression and cultural life and identity.<sup>14</sup>

Women represent the majority of the poor; this limits their ability to combat gender-based violence and other misconduct, as well as increasing their vulnerability. As Chinkin and Charlesworth note, the disruption that often occurs after the end of conflict makes women susceptible to violence in the aftermath.<sup>15</sup>

The World Bank Global Monitoring Report on the MDG<sup>16</sup> highlighted the need to focus on fragile states and gender equality.<sup>17</sup> It identified three major ways that women face inequality in

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<sup>10</sup> See Dejo Olowu, *An integrative rights-based approach to human development in Africa* (Pretoria University Law Press 2009) 3. Olowu describes the impact of the African economic crisis on women and children, arguing that in most situation women are at the receiving end.

<sup>11</sup> Hazel M. McFerson, 'Poverty Among Women in Sub-Saharan Africa: A Review of Selected Issues' (May 2010) 11:4 *Journal of International Women's Studies* <<http://www.bridgew.edu/soas/jiws/May10/Hazel.pdf>> accessed 30 June 2012.

<sup>12</sup> Ibid 17.

<sup>13</sup> Ibid 17.

<sup>14</sup> Michael Nyongesa Wabwile, *Legal Protection of Social and Economic Rights of Children in Developing Countries; Reassessing International Cooperation and Responsibility* (Intersentia 2010) 7.

<sup>15</sup> Christine Chinkin and Hilary Charlesworth, 'Building Women into Peace; The International Legal Framework' (2006) 27.4 *Third World Quarterly* 937-957.

<sup>16</sup> United Nations Millennium Development Declaration: General Assembly Resolution 55/2 of 8 September 2000.

these states: inequality with regards to law, political voice, and resources. The political will of state parties to address socio-economic needs is important to the realisation of the MDG<sup>18</sup> and other Women, Peace and Security agendas set by the United Nations. Thus, without State parties' commitment to strengthening women's voices and identities post-conflict, transformation may not be possible.

State parties undoubtedly have obligations to support the realisation of women's socio-economic rights, particularly in the most vulnerable post-conflict situations. Furthermore, as noted by Chinkin, the principle of non-discrimination in economic and social life, particularly with respect to the allocation of economic and social resources, is crucial for women; failure to do this may negatively impact upon wider enjoyment of their human rights, which include the right to work, political rights, and social and civil rights.<sup>19</sup> However, the two countries have failed in this regard.

This is evident in the CEDAW Committee's concluding observations on Sierra Leone, which expressed concern over the precarious situation of women in the country: women are 'disproportionately affected by poverty and lack of adequate health services, education, economic opportunities, including credit facilities and access to justice'.<sup>20</sup> The Committee,

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<sup>17</sup> World Bank Global Monitoring Report: Confronting the Challenges of Gender Equality and fragile States on the Millennium Development Goals (MDGs) (2007) <<http://www.worldbank.org>> accessed 3 July 2012.

<sup>18</sup> These two countries are committed to achieving the UN Millennium Development Goals, set by the International Community in 2000, to promote gender equality and women's empowerment, and also to halve poverty by 2015. The MDG exemplify a signpost for the realisation of global economic and social development, and provide a broad platform to meeting the socio-economic needs of the people.

<sup>19</sup> Christine Chinkin, "The Protection of Economic, Social and Cultural Rights Post-Conflict," paper series commissioned by the Office of the High Commissioner for Human Rights (2009) 22 <[http://www2.ohchr.org/english/issues/women/docs/Paper\\_Protection\\_ESCR.pdf](http://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf)> accessed 8 of September 2012.

<sup>20</sup> Committee on the Elimination of Discrimination against Women Thirty-eighth session 14 May-1 June 2007, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Sierra Leone*. See CEDAW/C/SLE//Q/5/Add.1 [36].

linking poverty to development, calls on the government ‘to make the implementation of the Convention and the promotion of gender equality an explicit component of its national development plans and policies, in particular those aimed at poverty alleviation and sustainable development’.<sup>21</sup> Thus, an important method by ‘which equality guarantees are underpinned is by ensuring that basic social protections for the most vulnerable are secured, such as housing, food and education’.<sup>22</sup>

Sierra Leone and Liberia both ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>23</sup> Scholars have emphasised the need to guarantee socio-economic rights, particularly for countries that are coming out of conflict. For example, Agbakwa<sup>24</sup> identified four reasons why socio-economic rights are important for conflict prevention and peace building: first, they give people the opportunity to make a claim against the state, and second, they provide people with the rights to challenge governmental priorities, particularly when they run against the wishes of the people. Thirdly, they also enhance the legitimacy of the state – a government accountable for/to socio-economic rights will most likely be answerable to its subjects. The last point raised is that they will recalibrate power maps in favour of democratic governance, which will indirectly support redistribution of state resources to the betterment of

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<sup>21</sup> *ibid* [7]. See also where CEDAW Committee also linked poverty and violence in the inquiry of Ciudad Juarez, Mexico. The Committee noted that women in Ciudad Juarez lack basic needs and access to justice, and recommended ensuring compliance with the provisions of CEDAW, including economic and social rights. Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico CEDW/C/2005/OP.8/MEXICO [289].

<sup>22</sup> C. McCrudden, ‘Equality and Discrimination’ in D. Deldman (ed), *English Public Law* (Oxford University Press 2004) 588.

<sup>23</sup> International Covenant on Economic, Social and Cultural Rights (adopted and opened for signature, ratification, and accession by General Assembly Resolution 2200A (XXI) on 16 December 1966, entered into force 3 January 1976). In accordance with Article 2, Liberia signed the Convention in 1967 and ratified it on 22 September 2004. Sierra Leone ratified and acceded to the instrument on 23 August 1996.

<sup>24</sup> Shedrack C. Agbakwa, ‘A path least taken; economic and socio-cultural rights and the prospect of conflict prevention and peace building in Africa’ 47:1 (2003) *Journal of African Law* 38.

the people.<sup>25</sup> With such accountability processes in place, there is more likelihood of achieving gender justice with enforceability of socio-economic rights.<sup>26</sup>

International law supports economic and social rights as crucial to peace building. Charlesworth and Chinkin<sup>27</sup> list the following socio-economic rights as particularly important to women post-conflict and in peace building: the right to the highest attainable standards of physical and mental health;<sup>28</sup> just and favourable work conditions;<sup>29</sup> social security;<sup>30</sup> and rights to education.<sup>31</sup> However, post-conflict reconstruction processes have shown that oftentimes these rights are ignored. The ICESCR has a positive normative content. For example, in General Comment No 3, the Committee affirmed that the minimum core obligation expected of states in respect to the realisation of the rights is ‘to ensure the satisfaction of, at the very least minimum essential levels of each of the rights.’<sup>32</sup> The Committee also gave examples of circumstances in which the state will be regarded as having failed to fulfil its duty under the covenant, including where the state fails to provide basic shelter, essential food provisions, health services, basic forms of education,

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<sup>25</sup> As can be seen in the constitutional courts, the guarantee of socio-economic rights in the South African Constitution has supported accountability; for example, as noted by Agbakwa (n 25) in the case of *Treatment Action Campaign and ors v Minister of Health and ors*. [2002] 5 SA 721 See also *Government of the Republic of South Africa and Others v Grootboom and Others* BCLR 1169 (4 October 2000). See also *Minister S v. Baloyi (Minister of Justice and Another Intervening)*, 2000 (11) BCLR 1169 (CC).

<sup>26</sup> The legal development in India of the maternal health cases further shows that such enforceability can be useful to womenfolk and can reduce the vulnerability of women and other groups. See the case of *Laxmi Mandal v. Deen Dayal Hari Nager Hospital and ors W.P.* 8853/2008, where the court held that compensation be paid to the family of the woman who died during childbirth on 20 January 2012. The Court found the Respondents in violation of Shanti Devi’s right to life and health, reiterating that her death was preventable. See also the *Jaitun v Maternity Home, MCD, Jangpura and Ors W.P.* No. 10700/2009. These cases demonstrate a complete failure of the public health system and a failure in the implementation of government schemes.

<sup>27</sup> Chinkin and Charlesworth (n 15) 946.

<sup>28</sup> See ICESCR, art. 12; African Charter on Human and Peoples Rights (ACHPR), art. 16.

<sup>29</sup> ICESCR, art. 7; ACHPR, art. 15.

<sup>30</sup> ICESCR, art. 9; ACHPR.

<sup>31</sup> ICESCR, art. 14; ACHPR, art. 17.

<sup>32</sup> Committee on Economic Social Cultural Rights, ‘General Comment 3; The Nature of States Parties Obligation’, art. (1) of the Covenant Fifth Session (1990) E/1991/23 Annex III [10]. General Comment No. 3 [9] states that article 2 ‘imposes an obligation to move as expeditiously and effectively as possible’ towards the Covenant’s objective.

and housing. Thus, a state must take the necessary steps required to maximise available resources before it can be free of this obligation. The concept of positive obligation in the CESCR is further articulated through the General Comment No. 16, which explains the different levels of obligation in the context of non-discrimination against women.<sup>33</sup>

In another General Comment, the ICESCR Committee affirmed that poverty constitutes a human rights violation. The Committee noted:

In the light of the International Bill of Rights, poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights. While acknowledging that there is no universally accepted definition, the Committee endorses this multi-dimensional understanding of poverty, which reflects the indivisible and interdependent nature of all human rights.<sup>34</sup>

Furthermore, the African Charter on Human and People's Rights, also ratified by both countries, reaffirmed the rights in the ICESCR and, in particular, provides in Article 22 that 'all peoples shall have the rights to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind'. The African Charter incontrovertibly recognised the importance of these rights through decisions of the African Commission on Human and People's Rights,<sup>35</sup> despite most African countries having

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<sup>33</sup> Committee on Economic Social Cultural Rights 'General Comment No 16 on the Equal Rights of men and women to the Enjoyment of All Economic, Social and Cultural Rights' (2005) UN /Doc. E/ C.12/2005/4 [18].

<sup>34</sup> Statement Adopted by the Committee on Economic, Social and Cultural Rights Twenty-fifth session on Poverty and the International Covenant on Economic, Social and Cultural Rights 23 (April-11 May 2001) E/C.12/2001/10 [8].

<sup>35</sup> *Annette Pagnouille (on behalf of Abdoulaye Mazou) vs. Cameroon (African Commission on Human and Peoples' Rights) Comm. No. 39/90 (1997).*

constitutions that continue to relegate socio-economic rights to non-justiciable directive principles (including the two countries in question).

As the arguments above indicate, including socio-economic rights in the constitution of a country is critical. However, in the case between *Socio Economic Rights Action and Center for Socio Economic Rights v Nigeria*,<sup>36</sup> the African Commission reaffirmed that economic and social rights are enforceable and further confirmed that all the rights within the African Charter are binding on all countries that have ratified the Charter.<sup>37</sup> The decision also showed that State Parties have a duty ‘to respect, protect, promote and fulfil’ socio-economic rights.<sup>38</sup> This by implication means that State parties are bound whether there are legal or policy frameworks affirming these rights or not. Thus, failure to ensure women’s socio-economic rights post-conflict represents an abuse of their human rights.

The African Charter provides that states must individually and collectively promote the right to development.<sup>39</sup> This is one of the unique provisions of the Charter, distinguishing it from other regional and international treaties.<sup>40</sup> However, most African States have failed to implement this

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<sup>36</sup> *SERAC v. Nigeria (Communication) Com No 155/96 AHRLR 60 (ACHPR 2001)*.

<sup>37</sup> *ibid*[68].

<sup>38</sup> *ibid*[44]. See also *Purohit and Moore v Gambia* (African Commission on Human and Peoples’ Rights) Communication 241/2001 (May 2003) 15-29. As noted by Chinkin, other General Comments reiterate and explain these obligations in particular contexts, for example CESCR, General Comment No. 18, *The right to work*, No. 15, *The right to water*, No. 14, *The right to the highest attainable standard of health*, No. 13, *The right to education* and No. 12, *The right to adequate food*. Other human rights bodies have adopted the same model, for example CEDAW, General Recommendation No. 24, *Women and Health*. See Chinkin (n 19) 33.

<sup>39</sup> African Charter, art. 22.

<sup>40</sup> Chidi Odinkalu, ‘Implementing economic, social and cultural rights under the African Charter on Human and People’s Rights’ in Malcom Evans and Rachel Murray (eds), *The African Charter on Human and People’s Rights: the system in Practice 1986-2000* (Cambridge University Press 2004) 192.

right. In a recent decision in the *Endorois*<sup>41</sup> case, the African Commission reaffirmed the right to development. It asserted that development must be participatory, non-discriminatory, accountable, and transparent.<sup>42</sup> The rights to non-discrimination and participation are essential for women coming out of conflict, having suffered neglect and discrimination manifested in the different forms of violence they suffered during the war – and indeed afterwards; inclusion in post-war reformulation processes will go a long way in affirming their rights within society. Ashamu asserts that the Commission’s definition of right to development ‘articulated clear duties incumbent on State Parties to the African Charter’.<sup>43</sup>

However, as Bulto notes, socio-economic rights have never been a priority of the African state, either individually or collectively; he argues that the marginalised state of rights is largely due to the slow pace to develop norms in the region.<sup>44</sup> The failure of Sierra Leone and Liberia further demonstrates the attitude of African leaders to the right to development. The project of making human rights a reality entails eliminating poverty and making it possible for citizens to be able to assert their rights to the fullest of its potential.<sup>45</sup>

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<sup>41</sup> *Center for Minority Rights Development Kenya and Minority Rights Groups International on behalf of Endorois Welfare Council v. Kenya African* (African Commission on Human and Peoples’ Rights) 276/2003 (4 February 2010).

<sup>42</sup> *ibid* [277].

<sup>43</sup> Elizabeth Ashamu, ‘Center for Minority Rights Development Kenya and Minority Rights Groups International on behalf of Endorois Welfare Council V Kenya: A Landmark Decision from the African Commission’ (2011) 55:2 *Journal of African Law* 300.

<sup>44</sup> Takele Soboka Bulto, ‘The Utility of Cross-Cutting Rights in Enhancing the Justiceability of Socio Economic Rights of the African Charter on Human Rights’ (2011) 29:1 *University of Tasmania Law Review*.

<sup>45</sup> ‘Globalisation and its impact on the full enjoyment of all Human Rights; Preliminary Report of the Secretary General UNGA, A/55/150 Para 47 (2000)’ cited in Chidi Odinkalu, ‘Back to the future: the imperative of prioritizing for the protection of human rights in Africa’ (2003) 47:1 *Journal of African Law* 1.



The AU Women's Protocol also makes provisions for the rights of African women to food security,<sup>46</sup> adequate housing,<sup>47</sup> positive cultural contexts,<sup>48</sup> health,<sup>49</sup> and a sustainable environment.<sup>50</sup> However, women in post-conflict Sierra Leone and Liberia continue to suffer in several ways; as my fieldwork shows, some women have become prostitutes, widows, and illiterates. Conflict and poverty affect both men and women in Sierra Leone and Liberia, but ample evidence shows that women bear the brunt and that the men have been better treated, either through the state institutions of Disarmament, Demobilisation and Reintegration<sup>51</sup> – which unfortunately focus more on male-centric vocational training and exclude women from job opportunities<sup>52</sup> – or from donor support for micro credit.<sup>53</sup> While Liberia recently ratified and acceded to the AU's Women's Protocol, Sierra Leone only signed in 2004 and is regrettably yet to ratify the Protocol. Both countries, meanwhile, have not signed the Optional Protocol to CEDAW.<sup>54</sup> The failure of the states to ratify both instruments demonstrates their unwillingness to fully support women's human rights.

Unfortunately, the WPS Resolution did not specifically address poverty in connection with post-conflict processes. While the call for participation, prevention, and protection may address gender imbalance issues, the failure to address the causes and effects of women's vulnerability

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<sup>46</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (11 July 2003) CAB/LEG/66.6 [hereafter AU Women's Protocol].

<sup>47</sup> *ibid* 15.

<sup>48</sup> *ibid* 16.

<sup>49</sup> *ibid* 17.

<sup>50</sup> *ibid* 18.

<sup>51</sup> Kathleen M. Jennings, 'The Political Economy of DDR in Liberia; A gendered critique' (2009) 9:4 *Conflict Security and Development* 475.

<sup>52</sup> Florence in Sierra Leone gave an example of how she was abandoned after conflict without a job but the man who abducted her was given a job by the government (Field Interview, Liberia, January 2012).

<sup>53</sup> Elaine Zukerman and Marcia Greenberg, 'The Gender Dimensions of Post Conflict Reconstruction: An Analytical Framework for Policy Makers' Gender and Development' (2004) 12:3 *Peace Building and Reconstruction* 70.

<sup>54</sup> Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (A/RES/54/4).

has damaging consequences on the achievement of the WPS agenda. This thesis contends that achieving gender justice is a transformative process, and the failure of the peace and security frameworks to address the structural biases that continue to negatively impact women not only poses a risk to the peace and security agenda, but invariably fails to support any meaningful impact in women's lives.

Any economic framework that will respond to gender justice must acknowledge the gendered dimension of armed conflict in order to adequately address the peculiar needs of women and girls. The findings in the field affirmed that gender justice is a broad concept to women coming out of armed conflict; while civil and political rights are essential, other socio-political and economic conditions must be met that are key to reinforcing society against gender discrimination and future injustices against women. Unfortunately, existing frameworks are yet to integrate these concerns of women in conflict. Thus, sustainable development needs 'gender sensitive and people centred human development based on equality, participation of government, civil society, transparency and accountability in governance'.<sup>55</sup> The AU Protocol reaffirmed African women's rights to sustainable development<sup>56</sup> in order to support women affected, amongst other things, by the negative effects of globalisation. In reality, this promise remains unfulfilled.

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<sup>55</sup> CEDAW, 'Working Paper on the World Summit on Sustainable Development' (2002) CEDAW/2002/1/WP.2, 26th Session. 2

<sup>56</sup> AU Women's Protocol, art. 19.

### **3. So many norms and yet so little progress?**

This thesis detailed the development of both humanitarian laws and human rights laws within the United Nations, which have led to a multiplicity of human rights treaties, declarations, reports, conference or committee documents, UN resolutions, and decisions by human rights bodies. These various frameworks condemn, protect, prohibit, or outright criminalise the abuse of human rights; some specifically address issues of gender-based violence and support the inclusion and integration of women in social and political life. The role legal instruments can play in supporting, protecting, and serving as a guide and reference point for advancing people's rights is incontrovertible; however, this thesis found that in reality, legal frameworks are inadequate to ameliorate the effect of armed conflict on the lives of women and girls in the two countries of study. One of the major reasons is the lack of political will by state parties to push for the enforcement of these rights.

The failure of states to demonstrate positive political will towards implementing gender concerns has been a source of concern to all and, in particular, to the CEDAW Committee designated to monitor the implementation of the Women's Bill of Rights internationally. During its 45<sup>th</sup> session, the CEDAW Committee emphasised the need for the state to demonstrate positive political will to address gender issues at the national level. In considering the implementation of CEDAW, MDGs and Beijing+5 outcomes, the Committee noted that 'states must do more to guarantee women's access to justice, including by ensuring that judicial systems and law

enforcement facilitate women's capacity to claim their rights'.<sup>57</sup> They must make sure that all discriminatory laws are repealed and that they exercise due diligence in pursuing violations perpetrated by private actors.<sup>58</sup> At the international level, more efforts must be made to support women's use of the international human rights machinery, so it effectively promotes national level implementation of these instruments'.<sup>59</sup>

The inadequate implementation of women's human rights has been a concern to many advocates and prompted a recent study by the International Center for Women Research to examine the impact of CEDAW at the national level.<sup>60</sup> In particular, the study shows that implementation of CEDAW is poor: it identified lack of political will as one of the barriers affecting the realisation of the instrument, along with other challenges including gaps between the people and the government, capacity and skills to understand gender issues, and lack of public knowledge on some of the existing laws.<sup>61</sup>

Article 2 of the CEDAW represents the core principle and the 'essence of the convention'.<sup>62</sup> It places clear obligations on the state parties to CEDAW to ensure actual realisation of the treaty. The provision requires that legal guarantees of equality provide not just formal protection but

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<sup>57</sup> Statement of the Committee on the Elimination of Discrimination against Women on the fifteen-year review of the Beijing Declaration and Platform for Action 45th session, March 2010. <[http://www2.ohchr.org/english/bodies/cedaw/docs/Beijing\\_Declaration.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/Beijing_Declaration.pdf)> accessed on 12 August 2012.

<sup>58</sup> F. Banda, 'Report on a Mechanism on Laws that Discriminate against women' (OHCHR 2008). <[http://www.ohchr.org/Documents/Publications/laws\\_that\\_discriminate\\_against\\_women.pdf](http://www.ohchr.org/Documents/Publications/laws_that_discriminate_against_women.pdf)> accessed on 20 September 2012.

<sup>59</sup> *ibid.*

<sup>60</sup> Ann Warner, *Recognizing Rights, Promoting Progress, The Global Impact of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* (International Center for Research on Women 2010) <<http://www.icrw.org/publications/recognizing-rights-promoting-progress>> accessed 3 July 2012

<sup>61</sup> *ibid.*

<sup>62</sup> See General Recommendation 28 [41], (cited in Andrew Byrnes, 'Article 2' in Marsha Freeman, Christine Chinkin and Beate Rudolf (eds), *UN Convention on the Elimination of all forms of Discrimination Against Women: A Commentary* (Oxford University Press 2012) 83.

actual protection of women's rights. Unambiguously, Article 2(a) emphasises both *de facto* and *de jure* implementation. Further, Article 2(b) emphasises the steps the state must take to affirm effective practical protection; it expects the state to take all measures to prohibit any form of discriminatory act. As Byrnes observes, the word 'prohibit' implies that an effective legal proscription of discrimination is required and the language of 'appropriate legislative measures goes to the practical form that this legislation might make rather than whether the legislative measure are appropriate at all'.<sup>63</sup> Thus, in practical terms, the state is expected to take concrete steps not only to make laws towards gender equality, but also to ensure that women enjoy the rights accrued to them through these laws.

Both Sierra Leone and Liberia enacted laws post-conflict, but unfortunately they are ineffective due to lack of political will and other legal bottlenecks. To a large extent, this raises the question of whether the government actually intended to protect women's rights post-conflict in any real sense. For example, constitutional provisions exist in both countries that have become hindrances to the enjoyment of women's rights. Sierra Leone in particular enacted three new laws protecting women's rights<sup>64</sup> that cannot function merely because the constitution provision has a claw-back allowing for discrimination with respect to adoption, marriage, divorce, and other personal laws.<sup>65</sup> The constitutional provisions have indirectly reduced the efficacy of the law.<sup>66</sup>

Moreover, a state is expected not only to put the laws in place, but also the necessary machinery to support the realisation of these laws. Article 2 of the AU Women's Protocol mirrored the

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<sup>63</sup> *ibid* 83.

<sup>64</sup> The Domestic Violence Act (Act No 21 of 2007), The Devolution of Estates Act (2007), and the Registration of Customary Marriage and Divorce Act 2007.

<sup>65</sup> Constitution of the Federal Republic of the Sierra Leone, s 27(4)(d).

<sup>66</sup> Byrnes (n 61) 84.

CEDAW provisions on the duty of the state to display political will to support women's human rights protection.<sup>67</sup> The AU Protocol provides that state parties should ensure the implementation of the Protocol at the national levels; the state is also expected to submit a periodic report to indicate the extent to which legislative and other measures have supported the realisation of the intentions and aspirations of the Protocol.<sup>68</sup> This places the obligation of outcomes on the state. In a unique way, the Protocol went further to ensure that states funds are tied to support the realisations of women's rights:<sup>69</sup> the AU Protocol also provides that 'state parties shall undertake to adopt all necessary measures and in particular shall provide budgetary and other resources for full and effective implementation of this Protocol'. The AU Protocol can be read progressively with Article 3 of the CEDAW, which emphasises the guarantee of women's human rights and fundamental freedoms, and lays 'a legal basis for structural transformative change of women's lives'.<sup>70</sup>

Moreover, in General Comment 3, the Committee on ICESCR emphasises that all appropriate measures in Article 2(1) should be given their 'full and natural meaning.'<sup>71</sup> Chinkin explains further that 'all appropriate measures' and 'shall take' mean that the state has a positive obligation to take urgent immediate steps towards progressive realisation of the aspirations of the CEDAW.<sup>72</sup> Accordingly, one of the immediate obligations should be temporary measures in political, social, and economic fields. As Chinkin further observes, Article 3 gave a foundational

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<sup>67</sup> Article 2, AU Women's Protocol.

<sup>68</sup> AU Women's Protocol, art 26.

<sup>69</sup> AU Women's Protocol, art. 26(2).

<sup>70</sup> Christine Chinkin, 'Article 3' in Freeman et al. (n 62) 102.

<sup>71</sup> ICESCR, 'General Comment 3' (1990), UN DOC E/1991/123 [4]; see generally the explanation of Chinkin (n 69).

<sup>72</sup> Chinkin (n 69) 107.

meaning to Article 4 of the CEDAW, which focuses on temporary measures.<sup>73</sup> Among other ways of achieving effective realisation, the Committee also required that state parties take steps towards creating awareness to make laws that will effectively implement the CEDAW.<sup>74</sup>

As Koen notes, the failure to promote a culture of respect for human rights, rule of law, and constitutionalism can affect the enjoyment of rights,<sup>75</sup> and for women coming out of conflict, it is a complicated issue of social justice. In most plural legal systems, women suffer from the co-existence of customary, statutory, and religious laws; failure to address women's rights relating to personal laws often compromises their rights. It is therefore critical to sensitise the legislatures towards understanding gender issues to ensure positive disposition to the treaties.

The CEDAW Committee's concluding observations<sup>76</sup> on both countries enjoined state parties to take steps towards realisation by supporting, amongst other things, constitutional reform; however, the field reports conducted in this research show that efforts to amend the constitutions in both countries have been met with resistance within the political terrain itself. State parties are thus obliged, as spelt out in General Recommendation 25, to fulfil the tripartite obligation to respect, protect, and fulfil the 'non discrimination for women and ensure the development and advancement of women in order to improve their position to one of de jure as well as de facto equality with men'.<sup>77</sup> To emphasise, the point here is that while a plethora of laws exist, the

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<sup>73</sup> *ibid* 101.

<sup>74</sup> Concluding observation on Myanmar CEDAW /C/MMR/CO/3/2008 [11], cited in Chinkin (n 69) 108.

<sup>75</sup> Karin Koen, 'Claiming Space: Reconfiguring women's roles in post conflict situations' (2006) 121 *ISS Paper* 9.

<sup>76</sup> Committee on the Elimination of Discrimination against Women Forty-Fourth session Concluding Observations of the Committee on the Elimination of Discrimination against Women Liberia (7 August 2009) CEDAW/C/LBR/CO/6; CEDAW/C/SLE/CO5.

<sup>77</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (19 October 2010) CEDAW/C/2010/47/GC.2 [4]

major challenge is that state parties lack the political will to follow these laws through to the realisation of women's rights in Africa. This further explains why the law has poor enforcement mechanisms.

#### **4. Fragile States, Fragile Institutions?**

Most international instruments dealing with human rights enjoin state parties to take appropriate measures, institutional and otherwise, to ensure support for the realisation of women's human rights. The CEDAW Committee emphasises that legislation may not be the only way to achieve this, and therefore calls on states to adopt the best measures. The state therefore has the discretion to choose the appropriate measure given its social, economic, and political context,<sup>78</sup> which may be through the creation of administrative or protection mechanisms.

The field and desk research conducted for this thesis shows that institutions meant to support gender justice and post-conflict structures are ineffective for several reasons, mainly due to lack of resources. As Stephen Lewis, former UN Special Representative of the Secretary General on Africa and HIV/AIDS put it, '*Here's what festers in the craw; the funding for implementation is not available. The needs and rights of women never command singular urgency*'.<sup>79</sup> Lewis's speech depicts the situation of women in the two states under review: the government has become inaccessible and unaccountable to women. Ordinarily, it is expected that post-conflict rebuilding has the potential to transform state structures and institutions, but in this case, the positive impact on gender justice is negligible or minimal.

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<sup>78</sup>ibid [15].

<sup>79</sup> Stephen Lewis, 'Text of a speech by Stephen Lewis, Delivered at the University of Pennsylvania Summit on Global Issues in Women's Health', cited in Sanam Naraghi Anderlin, *Women building peace: what they do why it matters* (Rienner Publishers 2007) 205.



The two countries notably lack the resources to commit to state restructuring processes, and, as such, both Liberia and Sierra Leone have done very little to put in place institutions that can adequately respond to women's post-war challenges. Implementing the United Nations Security Resolutions, like any other treaties or laws, requires dedicated funds to be effective, and as with many policies relating to women, the National Action Plans in both countries suffer the consequences of a paucity of resources, because the policies are not seen as a high priority; securing adequate funding can therefore become a setback to the proposed plan.

Furthermore, a marked over-dependence on donor agencies constrains the ability of both countries to support the implementation of the WPS agenda. As Castillejo notes, 'almost half of the Sierra Leone national budget comes from development assistance, with DFID, the European Commission and the World Bank'.<sup>80</sup> Even when policies relating to women are prioritised, donor aid can pose issues. In Liberia, the Norwegian government has committed significant resources to supporting the NAPs through the Women and Children Protection Section (WACPSC);<sup>81</sup> however, a major concern is the possible sustainability beyond the duration of the grant.

In developing international cooperation on assistance, the African Commission has emphasised the role of the international community in ensuring and supporting peace on the continent:<sup>82</sup> in the same vein, the ICESCR General Comment No. 12<sup>83</sup> provides that 'states should recognize the

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<sup>80</sup> Clare Castillejo, 'Strengthening Women's Citizenship in the context of state building: The Experience of Sierra Leone' (September 2008) 69 Working Paper 7 <<http://www.fridge.org>> accessed 29 June 2012.

<sup>81</sup> Niels Nagelhus Schia and Benjamin de Carvalho, 'Nobody Gets Justice Here: Addressing Sexual and Gender-Based Violence and the Rule of Law in Liberia' NUPI Working Paper 761 (2009) 5 *Security in Practice* 13.

<sup>82</sup> Rachel Murray, *The African Commission on Human and People's Rights and International Law* (Hart Publishing 2000) 116.

<sup>83</sup> General Comment No 12, 'The Right to Adequate Food (art. 11)' (1999) EC 12/99/5 [36].

essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food'. Furthermore, the Beijing PFA, article 147(f) includes the support of international organisations in providing assistance for the long-term needs of women, and the last MDG 8 also emphasises the role of development aid in development. The point being made is that such support must be done in an equitable manner and towards the realisation of women's material gains.

In Liberia, where there is limited progress, the principal institutions that are to facilitate the protection of women against violence, for example the implementation of the NA, (of particular ministries or defence forces) lacks the will and capacity for positive implementation. This is evident in the Women and Children Protection Section (WAPSC) of the Police, where research shows that most female police officers in the section are bereft of the basic capacity to support women suffering any form of violence.<sup>84</sup>

Furthermore, though the Special Court represents a laudable contribution to the transitional justice process in Sierra Leone, the unambiguous inclusion of a broad range of sex crimes adapted from the Rome Statutes and reproduced in the statutes for the Sierra Leone Courts and other jurisdictions is particularly commendable. Despite its success, ambiguity still exists in the definition of some of the offences and the law fails to cover major gender crimes that manifested during the conflict in Sierra Leone (for instance, forced marriage was not in the Special Court Statute) is a major gap in the Special Court's response to war crimes that have had horrific effects on the lives of many women. While the majority of interviewees appreciated the efforts

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<sup>84</sup> Schia and de Carvalho (n 80) 12.

towards prosecution, particularly the Civil Society Organisations (CSOs) and professionals, very few agreed that the amount invested into the process is worth the outcome for a country that is wallowing in poverty. The majority perceive the process as externally driven without due consideration to the priorities of the people within the country.

Moreover, while the Truth and Reconciliation Commissions created in the two states made recommendations to support women's human rights post-conflict, the governments mostly jettisoned these. Transitional justice mechanisms mean nothing to women if their essence is to talk about your experience of abuse and no effective remedy results from the process, either individually or collectively. This thesis also demonstrates the uneven distribution of reparatory benefits and the way the processes excluded some key issues germane to the lives of women coming out of conflict, for example the legitimisation of children born during the conflict to rebels or other group of people who took advantage of women's vulnerability during the war, and addressing other needs like housing for displaced people particularly women.

Transitional justice mechanisms, particularly Disarmament, Demobilization and Reintegration, (DDR) betray an incapacity to adequately integrate gender concerns. As noted earlier, both failed to critically analyse the gendered nature of the conflict and situate women's issues within the context of nation-building. Like other transitional justice approaches, they created a victim-centred approach in their analysis, making the gendered understanding of the conflict invisible beyond sexual violence.

While NAPs represent one of the techniques of integrating the WPS resolution at the national level, they are becoming a progressively important way to support the methods that can facilitate gendered peace processes. The essence of NAPs is to ensure that women's post-conflict concerns are incorporated in the plan for post-conflict reconstruction. The NAPs are also intended to ensure that both donor and recipient countries support post-conflict interventions in a more equitable way that reflects the depth and peculiarities of experience in each country.

This thesis also found that in Liberia and Sierra Leone the NAPs lack a bottom-up approach – thus the women intended as the direct beneficiaries of the plans did not feel their impact. Furthermore, the failure of communities 'to own' the NAP process and the failure of (most) state parties to put in place accountability and monitoring mechanisms to support the framework are major and continuing challenges to effective implementation.

In both countries a probable absence of the requisite political will is especially problematic, particularly in Sierra Leone, coupled with a lack of enforcement or monitoring mechanisms.

## **5. The AU and WPS Agenda**

African peace processes have largely benefited from informal processes led by women, but rarely are women included or even acknowledged in the formal ones. This highlights the failure of the African Union to support gender mainstreaming or integrate gender and promote women's human rights and gender justice post-conflict.

While the thesis demonstrates the developments within the AU to support gender parity, it also emphasises the need to link the WPS Agenda with the AU Women's Protocol, other gender protocols and policies in the region, and other human rights instruments like the CEDAW, in order to hold the policy makers and state parties accountable for any failure to support effective implementation of the WPS Agenda.

The 2010 AU Continental Report, which reviewed the popularisation, domestication, and implementation of African Union Protocols, policy standards, and frameworks, found 'alarming gaps between most of the instruments'<sup>85</sup> and practices of most member states. The Report called for a change in behaviour of both the African Union member states and organs to avert the devastating effect that their inaction has continued to have on millions of Africans. The report also called for official monitoring mechanisms to track state members' performances against the key instruments, and for the full integration of the AU Women's Protocol.

Furthermore, the report assessed the commitments made by AU member states toward the Solemn Declaration on Gender Equality in Africa (2004) and the AU Protocols, expressing concern over the reluctance of the state parties within the AU to report annually on progress in compliance with the SDGEA, stating that very few had reported.<sup>86</sup> The Continental Report noted that declarations on gender equality have continued to face 'powerful conservative and sexist traditions and social beliefs', and further emphasised the paucity of funds as a major hindrance in the pursuit of gender equality aspirations on the continent.<sup>87</sup>

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<sup>85</sup> State of the Union Continental Report (2010) <<http://www.stteoftheunionafrica.net>> accessed on 20 August 2012.

<sup>86</sup> *ibid* 12.

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## 6. Concluding Remarks

The thesis notes that international humanitarian and human rights laws protecting women have recorded significant developments, particularly since the ICTY and the ICTR cases and the formal adoption of the CEDAW. However, the implementation processes are weak, and States lack the political will to achieve key women's rights concerns. This continues to have a debilitating effect on the advancement of women's rights generally. States' continued tolerance of violence has impacted negatively on violence against women in armed conflict, and feminist researchers like Judith Gardam suggest a separate protocol to the CEDAW addressing the issues of women in armed conflict.<sup>88</sup> However, rather than reviewing the laws to meet with the demands of armed conflict and gender-based discrimination, the 'soft law' option was adopted by the UN Security Council, leading to several resolutions on WPS and to what has been described as the fragmentation of laws on women and armed conflicts.

Some see the language of the WPS Resolutions as weak and incapable of effecting the needed changes in war and afterwards. This thesis argues that the WPS Resolutions are not radical enough to support a transformative process that can effect quick and full implementation of women's rights in post-conflict reconstructions. It further argues that even at the macro level, attempts at experimenting with gender mainstreaming in institutions have been uncoordinated. While donor aid is important, it always addresses short-term projects and is tailored to the home countries' agendas and specific issues in line with their priorities, which often time do not include women. This has implications for long-term post-conflict reconstruction and governance

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<sup>88</sup>Judith G. Gardam and Michelle J. Jarvis, *Women, Armed Conflict and International Law* (Kluwer Law International 2001) 257.

accountability processes. These challenges hamper the effective implementation of the WPS Resolutions.

As noted, the non-coercive legal status of the WPS Resolutions makes them persuasive, not mandatory, and incapable of enforcement. This thesis argues that as a result, the WPS agenda becomes mostly dependent on the willingness of individual States advancing the women's rights agenda in armed conflict. For example, as at September 2012, only five countries in Africa had formally adopted the NAPs.<sup>89</sup> The fact that the WPS agenda does not have a strong international character weakens its effect at the local level, and thus it fails as a reliable instrument asserting women's rights.

The thesis demonstrates that both the legal and institutional frameworks have failed at the national level to address gender justice for women; conversely, the international regime has failed to find its expression within the local context. The State has failed to address the structural imbalances that existed before the war, and continues to exclude women in society. Indeed, the feminist critiques of international law forming the backbone of this thesis have been reinforced by the empirical findings that women's needs are still ignored.

A review of the interventions shows that scant priority is accorded to the political and socio-economic needs of women post-conflict. The thesis has demonstrated the abominable effect of conflict: women are more vulnerable to more violence, and the State is incapable of addressing gender injustice. UNSCRs 1325 and 1820 have failed to either provide security for women or guarantee equal sharing of the resources in both countries.

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<sup>89</sup> Liberia, Sierra Leone, Cote d'Ivoire, Ghana, and Togo.

The thesis demonstrates that the masculine pillars of the State have further limited women's quest for justice. Women's agency has a vital role to play in demanding gender accountability, and there must also be coordinated efforts towards ensuring a flourishing human rights culture. This form of understanding will generate accountability and consciousness – if people know what rights are available to them, they can demand justice and contribute to supporting a better society. Poor post-conflict communities need a better understanding of their rights. The language of rights is important, and this will enhance women's opportunities to demand better justice post-conflict.

This thesis contends that promoting gender justice is crucial to any successful transformational process. Transitional justice systems should therefore create safe environments and equitable access to resources and decision-making processes. The government should invest in establishing an enabling environment that will support women's full integration, and promote access to resources, employment, and educational opportunities for women – this, in reality, can move women from the point of dependence to independence from post-war poverty. The state should also commit to combating gender stereotyping in laws as well as investing in building efficient institutions that can support the realisation of women's rights.

Presently, the international norms are inadequate to guarantee justice for women. In both Liberia and Sierra Leone, women's gender justice needs have not been met for several reasons, and the language of rights has not proved to be favourable to women. Without addressing the existing structural imbalances that continue to exclude women, the possibility of post-conflict gender justice for women in Africa will not be achieved.



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## **Appendix I: Field Interview Guide**

### **IDI QUESTIONS FOR SURVIVORS /VICTIMS OF GBV**

#### **Introductions**

1. Have you ever experienced war/conflict in your environment?
2. What personal experiences? Kindly share the details of your experience with us.
3. Where did the war occur? When?
4. Do you know of any other person that has experienced that form of war/conflict or any form of violence different from what you experienced? Can you share it with us?
5. What other kinds of violence do you know that occurred during that conflict situation? Which ones are common within this locality during the conflict you narrated?
6. How did you react to the conflict and the form of violence you talked about?
7. What do you think are the causes of the kind of GBV you experienced and the others you have identified?
8. Did you seek redress? If yes, what form of redress did you get? If not, why didn't you seek redress?
9. Are you aware of the truth commission?
10. Were you one of the people who appeared at the TRC?
11. How were you treated?
12. What form of compensation did you get?
13. Do you still see the perpetrator of the violence around you?
14. How do you feel when you see them?
15. Are you aware of the special court in your country?
16. Are you aware of any other means available to survivors of GBV in your community to see redress, for example:
  - a. Laws
  - b. Polices
  - c. Local edicts
  - d. Community sanctions

- e. Local organisations
- f. Shelters/safe houses

17. How effective are these?
18. By your estimation, did you think you got justice? Or that your case was well treated?
19. What were your expectations that if has been met would amount to justice in this circumstance?
20. What would you advise the government to do for victims of war conflict?

### **IDI QUESTIONS FOR JUDICIAL OFFICER - A MAGISTRATE OR HIGH COURT JUDGE OR LAWYER**

1. What do you know about the last Civil war in S/L?
2. What do you think are the root causes?
3. Have you had cases of women targeted violence brought to you related to the war? Which ones? What was the outcome of the cases you presided over?
4. What is your assessment of post war reconstructions for women targets of violence during the war?
5. Do you think women were treated fairly?
6. Are you aware of any other means available to survivors of GBV in your community to seek redress, for example:
  - a. Laws
  - b. Polices
  - c. Local edicts
  - d. Community sanctions
  - e. Local organisations
  - f. Shelters/safe houses
7. What is your assessment of TRC and the women who have suffered violence?
8. What about the Special courts, do you think they treated gender issues fairly?
9. What is your assessment of the law of this State regarding different forms of gender based violence? Do you find the laws adequate?
10. Are there gaps in the law that might make access to justice difficult for victims of GBV?

11. What are your suggestions? Do you think there is a need to review the laws?
12. What area in particular?
13. Are you aware of any international laws that could have been useful for the women in conflict?
14. What is the situation now for S/L?
15. What suggestions do you have for improving access to justice for victims/survivors of war?

### **IDI QUESTIONS FOR POLICY MAKERS – MINISTRY OF WOMEN AFFAIRS**

1. What do you know about the last war in S/L?
2. What kind of GBV did women experience? Kindly share the details of your experience with us?
3. What in your opinion are the root causes of GBV during the war?
4. What steps did the government/international community take to address the problem during and after the war?
5. What channels of redress were available to survivors of GBV in this community/State
  - a. Laws
  - b. Polices
  - c. Special court
  - d. Truth Commission
  - e. Community sanctions
  - f. Shelters/safe houses
6. How effective are these channels of redress?
7. What are gaps in the usage of these mechanisms? What are the barriers to seeking redress in this community? State?
8. Is tackling the suffering of women victims of war violence a priority issue for your ministry?
9. Do you have budgetary allocation for addressing the problems in 2010?
10. What percentage of your budget goes or will go into addressing the problem of this year?
11. What is your assessment of TRC and the women who have suffered violence?
12. What about the Special courts, do you think they treated gender issues fairly?
13. What is your assessment of the law of this State regarding different forms of gender based violence? Do you find the laws adequate?

14. Are there gaps in the law that might make access to justice difficult for victims of GBV?
15. What are your suggestions? Do you think there is a need to review the laws?
16. What area in particular?
17. Are you aware of any international laws that could have been useful for the women in conflict?
18. What is the situation now for S/L?
19. What suggestions do you have for improving access to justice for victims/survivors of war?
20. Do you think there is a need for a review of the laws to enable the women to get better justice?
21. What do you think should be done to avert future occurrence?

#### **FGD/IDI QUESTIONS FOR NGOs AND SOCIAL WORKER**

1. What do you know about the last war in S/L?
2. What are the different kinds of Gender-Based Violence that occurred? *Note for Facilitator (probe further to find out what respondents know about the various kinds of GBV mentioned)*
3. What kinds of cases of GBV do you receive/see or know about?
4. How bad was the situation for women? How many cases/reports or women came to you during and after the conflict?
5. Generally, how were survivors of GBV treated?
6. What are the channels of redress available to survivors of GBV?
  - a. Laws
  - b. Policies
  - c. Special courts
  - d. Community sanctions
  - e. TRC
  - f. Shelters/safe houses
7. How effective are these channels of redress?
8. What are the gaps in the usage of these mechanisms?
9. What are the barriers to women getting justice?

10. What is your assessment of TRC and the women who have suffered violence?
11. What about the Special courts, do you think they treated gender issues fairly?
12. What is your assessment of the law of this State regarding different forms of gender based violence? Do you find the laws adequate?
13. Are there gaps in the law that might make access to justice difficult for victims of GBV?
14. What are your suggestions? Do you think there is a need to review the laws?
15. What area in particular?
16. Are you aware of any international laws that could have been useful for the women in conflict?
17. What is the situation now for S/L?
18. What suggestions do you have for improving access to justice for victims/survivors of war?
19. What in your opinion can be done to stop these kinds of violence in future?

#### **IDI FOR TRC/SPECIAL COURT PERSONNEL**

1. What can you say about the last Civil war in S/L?
2. What do you think are the root causes?
3. As a member of the TRC, Did you get or see cases of women targeted violence brought to you related to the war? Which ones? What was the outcome of the cases you presided over?
4. What is your assessment of post war reconstructions for women target of violence during the war?
5. Do you think women were treated fairly?
6. What is your assessment of TRC recommendations and the women who have suffered violence?
7. What about the Special courts, do you think they treated them fairly?
8. What is your assessment of the law of this State regarding different forms of gender based violence? Do you find the laws adequate?
9. Are there gaps in the law that might make access to justice difficult for victims of GBV?
10. What are your suggestions? Do you think there is a need to review the laws?

11. What area in particular?
12. Are you aware of any international laws that could have been useful for the women in conflict?
13. What is the situation now for S/L?
14. What suggestions do you have for improving access to justice for victims/survivors of war?

### **WOMEN MEMBER OF RUF**

1. What do you know about the last Civil war in S/L?
2. What do you think are the root causes?
3. As a woman what role did you play in the war?
4. What are your experiences? Did you suffer any form of violence?
5. Are you aware of any kind of violence suffered by women during that war? Which ones?
6. How were the women treated?
7. Do you know if they seek any form of redress thereafter?
8. What is your assessment of post war reconstructions for women target of violence during the war?
9. Do you think women were treated fairly?
10. Are you aware of any means available to survivors of GBV?
  - a. Laws
  - b. Polices
  - c. TRC/Special Court
  - d. Community sanctions
  - e. Local organisations
  - f. Shelters/safe houses
11. What is your assessment of TRC and the women who have suffered violence?
12. What about the Special courts, do you think they treated them fairly?
13. What is your assessment of the law of this State regarding different forms of gender based violence? Do you find the laws adequate?
14. Are there gaps in the law that might make access to justice difficult for victims of GBV?

15. What are your suggestions? Do you think there is a need to review the laws?
16. What area in particular?
17. What is the situation now for S/L?
18. What suggestions do you have for improving access to justice for victims/survivors of war?



## Security Council

Distr.: General

31 October 2000

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### Resolution 1325 (2000)

Adopted by the Security Council at its 4213th meeting, on  
31 October 2000

*The Security Council,*

*Recalling* its resolutions 1261 (1999) of 25 August 1999, 1265 (1999) of 17 September 1999, 1296 (2000) of 19 April 2000 and 1314 (2000) of 11 August 2000, as well as relevant statements of its President, and *recalling also* the statement of its President to the press on the occasion of the United Nations Day for Women's Rights and International Peace (International Women's Day) of 8 March 2000 (SC/6816),

*Recalling also* the commitments of the Beijing Declaration and Platform for Action (A/52/231) as well as those contained in the outcome document of the twenty-third Special Session of the United Nations General Assembly entitled "Women 2000: Gender Equality, Development and Peace for the Twenty-First Century" (A/S-23/10/Rev.1), in particular those concerning women and armed conflict,

*Bearing in mind* the purposes and principles of the Charter of the United Nations and the primary responsibility of the Security Council under the Charter for the maintenance of international peace and security,

*Expressing* concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally



displaced persons, and increasingly are targeted by combatants and armed elements, and *recognizing* the consequent impact this has on durable peace and reconciliation,

*Reaffirming* the important role of women in the prevention and resolution of conflicts and in peace-building, and *stressing* the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

*Reaffirming also* the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts,

*Emphasizing* the need for all parties to ensure that mine clearance and mine awareness programmes take into account the special needs of women and girls,

*Recognizing* the urgent need to mainstream a gender perspective into peacekeeping operations, and in this regard *noting* the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations (S/2000/693),

*Recognizing also* the importance of the recommendation contained in the statement of its President to the press of 8 March 2000 for specialized training for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations,

*Recognizing* that an understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security,

*Noting* the need to consolidate data on the impact of armed conflict on women and girls,

1. *Urges* Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict;

2. *Encourages* the Secretary-General to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decisionmaking levels in conflict resolution and peace processes;

3. *Urges* the Secretary-General to appoint more women as special representatives and envoys to pursue good offices on his behalf, and in this regard *calls on* Member States to provide candidates to the Secretary-General, for inclusion in a regularly updated centralized roster;

4. *Further urges* the Secretary-General to seek to expand the role and contribution of women in United Nations field-based operations, and especially among military observers, civilian police, human rights and humanitarian personnel;

5. *Expresses* its willingness to incorporate a gender perspective into peacekeeping operations, and *urges* the Secretary-General to ensure that, where appropriate, field operations include a gender component;

6. *Requests* the Secretary-General to provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peacebuilding measures, *invites* Member States to incorporate these elements as well as HIV/AIDS awareness training into their national training programmes for military and civilian police personnel in preparation for deployment, and *further requests* the Secretary-General to ensure that civilian personnel of peacekeeping operations receive similar training;

7. *Urges* Member States to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts, including those undertaken by relevant funds and programmes, inter alia, the United Nations Fund for Women and United Nations Children's Fund, and by the Office of the United Nations High Commissioner for Refugees and other relevant bodies;

8. *Calls on* all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:

- (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;
- (b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;
- (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary;

9. *Calls upon* all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court;

10. *Calls on* all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

11. *Emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard *stresses* the need to exclude these crimes, where feasible from amnesty provisions;

12. *Calls upon* all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and

girls, including in their design, and recalls its resolutions 1208 (1998) of 19 November 1998 and 1296 (2000) of 19 April 2000;

13. *Encourages* all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants;

14. *Reaffirms* its readiness, whenever measures are adopted under Article 41 of the Charter of the United Nations, to give consideration to their potential impact on the civilian population, bearing in mind the special needs of women and girls, in order to consider appropriate humanitarian exemptions;

15. *Expresses* its willingness to ensure that Security Council missions take into account gender considerations and the rights of women, including through consultation with local and international women's groups;

16. *Invites* the Secretary-General to carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution, and *further invites* him to submit a report to the Security Council on the results of this study and to make this available to all Member States of the United Nations;

17. *Requests* the Secretary-General, where appropriate, to include in his reporting to the Security Council progress on gender mainstreaming throughout peacekeeping missions and all other aspects relating to women and girls;

18. *Decides* to remain actively seized of the matter



## Security Council

Distr.: General

19 June 2008

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### Resolution 1820 (2008)

Adopted by the Security Council at its 5916th meeting, on  
19 June 2008

*The Security Council,*

*Reaffirming* its commitment to the continuing and full implementation of resolution 1325 (2000), 1612 (2005) and 1674 (2006) and recalling the Statements of its president of 31 October 2001 (Security Council/PRST/2001/31), 31 October 2002 (Security Council/PRST/2002/32), 28 October 2004 (Security Council/PRST/2004/40), 27 October 2005 (Security Council/PRST/2005/52), 8 November 2006 (Security Council/PRST/2006/42), 7 March 2007 (Security Council/PRST/2007/5), and 24 October 2007 (Security Council/PRST/2007/40);

*Guided* by the purposes and principles of the Charter of the United Nations,

*Reaffirming also* the resolve expressed in the 2005 World Summit Outcome Document to eliminate all forms of violence against women and girls, including by ending impunity and by ensuring the protection of civilians, in particular women and girls, during and after armed conflicts, in accordance with the obligations States have undertaken under international humanitarian law and international human rights law;

*Recalling* the commitments of the Beijing Declaration and Platform for Action (A/52/231) as well as those contained in the outcome document of the twenty-third Special Session of the United Nations General Assembly entitled “Women 2000: Gender Equality,

Development and Peace for the Twenty-first Century” (A/S-23/10/Rev.1), in particular those concerning sexual violence and women in situations of armed conflict;

*Reaffirming* also the obligations of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol thereto, the Convention on the Rights of the Child and the Optional Protocols thereto, and *urging* states that have not yet done so to consider ratifying or acceding to them,

*Noting* that civilians account for the vast majority of those adversely affected by armed conflict; that women and girls are particularly targeted by the use of sexual violence, including as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group; and that sexual violence perpetrated in this manner may in some instances persist after the cessation of hostilities;

*Recalling* its condemnation in the strongest terms of all sexual and other forms of violence committed against civilians in armed conflict, in particular women and children;

*Reiterating* deep concern that, despite its repeated condemnation of violence against women and children in situations of armed conflict, including sexual violence in situations of armed conflict, and despite its calls addressed to all parties to armed conflict for the cessation of such acts with immediate effect, such acts continue to occur, and in some situations have become systematic and widespread, reaching appalling levels of brutality,

*Recalling* the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals,

*Reaffirming* the important role of women in the prevention and resolution of conflicts and in peacebuilding, and *stressing* the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

*Deeply concerned* also about the persistent obstacles and challenges to women's participation and full involvement in the prevention and resolution of conflicts as a result of violence, intimidation and discrimination, which erode women's capacity and legitimacy to participate in post-conflict public life, and acknowledging the negative impact this has on durable peace, security and reconciliation, including post-conflict peacebuilding,

*Recognizing* that States bear primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law,

*Reaffirming* that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians,

*Welcoming* the ongoing coordination of efforts within the United Nations system, marked by the inter-agency initiative "United Nations Action against Sexual Violence in Conflict," to create awareness about sexual violence in armed conflicts and post-conflict situations and, ultimately, to put an end to it,

1. *Stresses* that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security, *affirms* in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security, and *expresses its readiness*, when considering situations on the agenda of the Council, to, where necessary, adopt appropriate steps to address widespread or systematic sexual violence;

2. *Demands* the immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians with immediate effect;

3. *Demands* that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety; and *requests* the Secretary-General, where appropriate, to encourage dialogue to address this issue in the context of broader discussions of conflict resolution between appropriate UN officials and the parties to the conflict, taking into account, inter alia, the views expressed by women of affected local communities;

4. *Notes* that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, *stresses the need for* the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and *calls upon* Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and *stresses* the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation;

5. *Affirms its intention*, when establishing and renewing state-specific sanctions regimes, to take into consideration the appropriateness of targeted and graduated measures against parties to situations of armed conflict who commit rape and other forms of sexual violence against women and girls in situations of armed conflict;

6. *Requests* the Secretary-General, in consultation with the Security Council, the Special Committee on Peacekeeping Operations and its Working Group and relevant States, as appropriate, to develop and implement appropriate training programs for all peacekeeping and humanitarian personnel deployed by the United Nations in the context of missions as mandated



by the Council to help them better prevent, recognize and respond to sexual violence and other forms of violence against civilians;

7. *Requests* the Secretary-General to continue and strengthen efforts to implement the policy of zero tolerance of sexual exploitation and abuse in United Nations peacekeeping operations; and *urges* troop and police contributing countries to take appropriate preventative action, including pre-deployment and in-theater awareness training, and other action to ensure full accountability in cases of such conduct involving their personnel;

8. *Encourages* troop and police contributing countries, in consultation with the Secretary-General, to consider steps they could take to heighten awareness and the responsiveness of their personnel participating in UN peacekeeping operations to protect civilians, including women and children, and prevent sexual violence against women and girls in conflict and post-conflict situations, including wherever possible the deployment of a higher percentage of women peacekeepers or police;

9. *Requests* the Secretary-General to develop effective guidelines and strategies to enhance the ability of relevant UN peacekeeping operations, consistent with their mandates, to protect civilians, including women and girls, from all forms of sexual violence and to systematically include in his written reports to the Council on conflict situations his observations concerning the protection of women and girls and recommendations in this regard;

10. *Requests* the Secretary-General and relevant United Nations agencies, inter alia, through consultation with women and women-led organizations as appropriate, to develop effective mechanisms for providing protection from violence, including in particular sexual violence, to women and girls in and around UN managed refugee and internally displaced persons camps, as well as in all disarmament, demobilization, and reintegration processes, and in justice and security sector reform efforts assisted by the United Nations;

11. *Stresses* the important role the Peacebuilding Commission can play by including in its advice and recommendations for post-conflict peacebuilding strategies, where appropriate, ways

to address sexual violence committed during and in the aftermath of armed conflict, and in ensuring consultation and effective representation of women's civil society in its country-specific configurations, as part of its wider approach to gender issues;

12. *Urges* the Secretary-General and his Special Envoys to invite women to participate in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and post-conflict peacebuilding, and encourages all parties to such talks to facilitate the equal and full participation of women at decision-making levels;

13. *Urges* all parties concerned, including Member States, United Nations entities and financial institutions, to support the development and strengthening of the capacities of national institutions, in particular of judicial and health systems, and of local civil society networks in order to provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations;

14. *Urges* appropriate regional and sub-regional bodies in particular to consider developing and implementing policies, activities, and advocacy for the benefit of women and girls affected by sexual violence in armed conflict;

15. *Also requests* the Secretary-General to submit a report to the Council by 30 June 2009 on the implementation of this resolution in the context of situations which are on the agenda of the Council, utilizing information from available United Nations sources, including country teams, peacekeeping operations, and other United Nations personnel, which would include, inter alia, information on situations of armed conflict in which sexual violence has been widely or systematically employed against civilians; analysis of the prevalence and trends of sexual violence in situations of armed conflict; proposals for strategies to minimize the susceptibility of women and girls to such violence; benchmarks for measuring progress in preventing and addressing sexual violence; appropriate input from United Nations implementing partners in the field; information on his plans for facilitating the collection of timely, objective, accurate, and reliable information on the use of sexual violence in situations of armed conflict, including through improved coordination of UN activities on the ground and at Headquarters; and

information on actions taken by parties to armed conflict to implement their responsibilities as described in this resolution, in particular by immediately and completely ceasing all acts of sexual violence and in taking appropriate measures to protect women and girls from all forms of sexual violence;

16. *Decides* to remain actively seized of the matter.



## Security Council

Distr.: General

30 July 2009

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### Resolution 1880 (2009)

**Adopted by the Security Council at its 6174th meeting, on  
30 July 2009**

*The Security Council,*

*Recalling* its previous resolutions, in particular resolutions 1528 (2004), 1721 (2006), 1739 (2007), 1765 (2007), 1795 (2008), 1826 (2008), 1842 (2008) and 1865 (2009), and the statements of its President relating to the situation in Côte d'Ivoire, and resolution 1836 (2008) on the situation in Liberia,

*Reaffirming* its strong commitment to the sovereignty, independence, territorial integrity and unity of Côte d'Ivoire, and recalling the importance of the principles of good-neighbourliness, non-interference and regional cooperation,

*Recalling* that it endorsed the Agreement signed by President Laurent Gbagbo and Mr. Guillaume Soro in Ouagadougou on 4 March 2007 ("the Ouagadougou Political Agreement", S/2007/144), and that it welcomed the four subsequent Supplementary Agreements,

*Recalling* in particular that in its resolution 1721 (2006) it notably endorsed the decision of the African Union Peace and Security Council on the mandate of the Head of State, and *recalling further* that in the statement of its President dated 28 March 2007 (S/PRST/2007/8) it endorsed the Ouagadougou Political Agreement, including its Chapter V on the institutional executive

framework, and that this Agreement provided for a period of ten months for the holding of the presidential elections,

*Expressing again its appreciation* to President Blaise Compaoré of Burkina-Faso (“the Facilitator”) for his continued efforts to support the peace process in Côte d’Ivoire, in particular through the Ouagadougou Political Agreement follow-up mechanisms, *commending and encouraging* the continued efforts of the African Union and the Economic Community of West African States (“ECOWAS”) to promote peace and stability in Côte d’Ivoire, and *reiterating* its full support for them,

*Stressing again* the importance of the international consultative organ participating in the meetings of the evaluation and monitoring committee, as an observer,

*Stressing* the need for the Council to pursue a rigorous, strategic approach to peacekeeping deployments,

*Reiterating* its strong condemnation of any attempt to destabilize the peace process by force, and *expressing its intention* to examine without delay the situation after any such attempt, on the basis of a report by the Secretary-General,

*Having taken note* of the report of the Secretary-General dated 7 July 2009 (S/2009/344),

*Recalling* its resolution 1674 (2006) on the protection of civilians in armed conflicts, *noting with concern*, in spite of the sustained improvement of the overall human rights situation, the persistence of reported human rights violations against civilians in different parts of the country, including numerous acts of sexual violence, *stressing* that the perpetrators must be brought to justice, and *reiterating* its firm condemnation of all violations of human rights and international humanitarian law in Côte d’Ivoire,

*Recalling* its resolution 1612 (2005) on children and armed conflict and the subsequent conclusions of the Security Council Working Group on Children and Armed Conflict pertaining

to parties in the armed conflict of Côte d'Ivoire (S/AC.51/2008/5), and *expressing* its deep concern that children continue to suffer from various forms of violence,

*Recalling also* its resolutions 1325 (2000) and 1820 (2008) on women, peace and security, *condemning* any sexual violence, stressing again the importance of women's equal participation and full involvement in all efforts for the maintenance of peace and promotion of peace and security and the need to increase their role in decision-making with regard to conflict prevention and resolution, and *encouraging* the Secretary-General to mainstream a gender perspective in the implementation of the mandate of the United Nations Operation in Côte d'Ivoire ("UNOCI"),

*Determining* that the situation in Côte d'Ivoire continues to pose a threat to international peace and security in the region,

*Acting* under Chapter VII of the Charter of the United Nations,  
(*Supporting the Ouagadougou political process*)

1. *Recalls* that in the statement of its President dated 29 May 2009 (S/PRST/2009/16) it welcomed the new electoral timeline endorsed in Ouagadougou by all the main Ivorian political actors and leading to the first round of the presidential elections on 29 November 2009, and *underlines* that the Ivorian political actors are bound to respect this timeline to demonstrate their political commitment towards the holding of free, fair, open and transparent elections;

2. *Reiterates* its determination to bring its full support to a credible electoral process for the presidential and legislative elections in Côte d'Ivoire and *expresses its conviction* that any postponement of the presidential elections of 29 November 2009 would be inconsistent with a credible process and with the Ouagadougou Political Agreement as endorsed by the Security Council;

3. *Welcomes* the successful completion of registration of voters;

4. *Recalls* that it had requested in its resolution 1865 (2009) the President of the Independent Electoral Commission to share publicly the details of the time frame, and *takes note* of the dates he provided for the five stages leading to the elections of 29 November 2009;

5. *Reiterates* that the publication of the electoral list is a crucial step in the electoral process, *looks forward* to the publication of the provisional voters list before the end of August 2009 and *urges* the Ivorian actors to meet their commitments in full and without delay;

6. *Expresses* its determination to follow closely the publication of the provisional and of the final electoral lists, *encourages* the Facilitator and the Special Representative of the Secretary-General to inform it without delay of any difficulty that may put at risk the electoral time frame, *expresses its intention* to examine any such situation without delay and *requests* the Special Representative of the Secretary-General to certify the voters list explicitly;

7. *Reiterates* that the Special Representative of the Secretary-General shall certify that all stages of the electoral process provide all the necessary guarantees for the holding of open, free, fair and transparent presidential and legislative elections in accordance with international standards and *reaffirms* its full support to the Special Representative of the Secretary-General in his certification role;

8. *Stresses* that it will base its assessment of the electoral process on the certification that will be prepared by the Special Representative consistent with the five-criteria framework referred to in document S/2008/250 and after inclusive contacts with all stakeholders in Côte d'Ivoire, including the civil society;

9. *Stresses the importance* of an inclusive participation of the Ivorian civil society in the electoral process, and of ensuring the equal protection of and respect for human rights of every Ivorian as they relate to the electoral system, and in particular respect for freedom of opinion and expression, and removing obstacles and challenges to women's participation and full involvement in public life;

10. *Urges* the Government of Côte d'Ivoire to provide the operators involved in the electoral process with the necessary support and *encourages* the international community to continue their

support to the electoral process, including by providing, with the agreement of the Ivorian authorities, electoral observation capacity and related technical assistance;

11. *Recalls* that it is fully prepared to impose targeted measures pursuant to paragraph 16 of resolution 1842 (2008), including among other things against persons who are determined to be a threat to the peace and national reconciliation process in Côte d'Ivoire, and *recalls* further that, pursuant to paragraph 6 of the above mentioned resolution, any threat to the electoral process in Côte d'Ivoire, in particular any attack or obstruction of the action of the Independent Electoral Commission in charge of the organization of the elections or the actions of the operators mentioned in paragraphs 1.33 and 2.11 of the Ouagadougou Political Agreement, shall constitute a threat to the peace and national reconciliation process for the purposes of paragraph 9 and 11 of resolution 1572 (2004);

12. *Urges* again the political parties to comply fully with the Code of Good Conduct for elections which they signed under the auspices of the Secretary- General, and in particular *urges* the Ivorian authorities to allow equitable access to public media;

13. *Takes note* again of the ceremony of transfer of authority held in Bouake on 26 of May 2009 as a positive development, *urges* the Ivorian parties to make further progress to advance the reunification and disarmament processes, and *encourages* the international donors to continue to provide their support to them, as appropriate;

14. *Calls upon* all concerned parties to ensure that the protection of women and children is addressed in the implementation of the Ouagadougou Political Agreement as well as the post-conflict reconstruction and recovery phases, including continued monitoring and reporting of the situation of women and children and that all reported abuses are investigated and those responsible brought to justice;

15. *Calls also upon* all Ivorian parties to take appropriate measures to refrain from, prevent and protect civilians from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures, upholding the principle of command responsibility, and training troops on the categorical prohibition of all forms of sexual violence;



16. *Recalls* the recommendation by its Working Group on children in armed conflict in Côte d'Ivoire (S/AC.51/2008/5) that a National Action Plan to address sexual violence be adopted, *welcomes* steps taken so far and urges the Government of Côte d'Ivoire, with the support of UNOCI and other relevant actors to finalize and implement it, *welcomes also* the Programme of Action to Combat Sexual Violence in the areas within its control signed by the Forces Nouvelles in January 2009 pursuant to the above-mentioned recommendations as well as the communiqué issued by four militia groups indicating their willingness to combat sexual violence, and *calls upon* all relevant parties, with the continued support of UNOCI to work together to implement their commitments;

17. *Urges* the signatories of the Ouagadougou Political Agreement to take the necessary steps to protect vulnerable civilian populations, including by guaranteeing the voluntary return, reinstallation, reintegration and security of displaced persons, including by addressing land tenure issues, with the support of the United Nations system, and to fulfil in this regard their commitments in accordance with the Ouagadougou Political Agreement and their obligations under international law;

18. *Welcomes* the progress made in the identification process, which is key to the long-term stability of Côte d'Ivoire, and *calls upon* the Ivorian parties to continue the identification operations, including after the elections; (“*Renewing the mandate of the United Nations Operation in Côte d'Ivoire*”)

19. *Decides* to renew the mandate of UNOCI, as determined in resolution 1739 (2007), until 31 January 2010, in particular to support the organization in Côte d'Ivoire of free, open, fair and transparent elections, within the electoral time frame referred to in paragraph 1 above;

20. *Requests* UNOCI, within its existing resources and mandate, to support actively the parties in the implementation of the remaining tasks under the Ouagadougou Political Agreement and its Supplementary Agreements, in particular those that are essential to the holding of a free, fair, open and transparent presidential election of 29 November 2009, and to continue to support the disarmament, demobilization and reintegration programme and the disarmament and dismantling of militias, and to provide technical and logistical support to the Independent

Electoral Commission for the preparation and the holding of the elections in a secure environment;

21. *Requests* the Secretary-General to continue to monitor progress on the achievement of the benchmarks referred to in annex 1 of his report dated 7 July 2009, *encourages* him to continue to refine and update them and to report to the Security Council, and *expresses its intention* to review these benchmarks in full before 15 October 2009, taking into account in particular the progress of the electoral process;

22. *Reiterates* its full support to the efforts of the Special Representative of the Secretary-General in Côte d'Ivoire, and *requests* UNOCI to continue to actively sensitize the Ivorian population to his certification role;

23. *Commends* the Facilitator for continuing to support the process to settle the crisis in Côte d'Ivoire, and *requests* UNOCI to continue to assist him and his Special Representative in Abidjan in the conduct of the facilitation, including by helping the Facilitator, as appropriate and upon his request, to carry out his arbitration role according to the provisions of paragraph 8.1 of the Ouagadougou Political Agreement and paragraphs 8 and 9 of the third Supplementary Agreement;

24. *Reaffirms* its intention, as expressed in resolution 1836 (2008), to authorize the Secretary-General to redeploy troops, as may be needed, between the United Nations Mission in Liberia (UNMIL) and UNOCI on a temporary basis and in accordance with the provisions of resolution 1609 (2005), as recommended by the Secretary-General in paragraph 25 of his report dated 7 July 2009 (S/2009/344) and *calls on* troop contributing countries to support the efforts of the Secretary-General in that regard;

25. *Underscores* the importance of updating the military concept of operations and rules of engagement before 30 September 2009 and *requests* the Secretary-General to report thereon to the Security Council and troop contributing countries;

26. *Requests* UNOCI to continue to contribute, pursuant to paragraph 2 (k) of its resolution 1739 (2007), to the promotion and protection of human rights in Côte d'Ivoire, with special

attention to violence committed against children and women, to monitor and help investigate human rights violations with a view to ending impunity, and to continue to support the efforts all parties should take pursuant to paragraphs 15 and 16 above, and *further requests* the Secretary-General to continue to include in his reports to the Security Council relevant information on progress in this area;

27. *Requests* UNOCI, in this context, to also continue to contribute, pursuant to paragraph 2 (m) of its resolution 1739 (2007), to assist the Government of Côte d'Ivoire in restoring a civilian policing presence throughout Côte d'Ivoire, and to advise the Government of Côte d'Ivoire on the restructuring of the internal security services and in re-establishing the authority of the judiciary and the rule of law throughout Côte d'Ivoire;

28. *Stresses* the need for UNOCI and humanitarian agencies to continue to work closely together, in relation to areas of tensions and of return of displaced persons, to exchange information on possible outbreaks of violence and other threats against civilians in order to respond thereto in a timely and appropriate manner;

29. *Requests* the Secretary-General to continue to take the necessary measures to ensure full compliance in UNOCI with the United Nations zero-tolerance policy on sexual exploitation and abuses and to keep the Council informed, and *urges* troop-contributing countries to take appropriate preventive action including predeployment awareness training, and other action to ensure full accountability in cases of such conduct involving their personnel;

30. *Decides* to extend until 31 January 2010 the authorization it provided to the French forces in order to support UNOCI, within the limits of their deployment and their capabilities;

31. *Expresses* its intention to review the situation as well as, as appropriate, the mandate of UNOCI, subject to the progress of the electoral process and in particular to the establishment of the voters list, and in any case no later than 15 October 2009, *requests* the Secretary-General to inform it in early September of the publication of the provisional electoral list and *further requests* the Secretary-General to provide to it a mid-term report, by the end of September 2009, of the situation on the ground, including a specific update on the security situation, and of the preparation of the electoral process;

32. *Further requests* the Secretary-General to inform the Security Council in his upcoming reports on the development of his strategic workplan containing indicative timelines to measure and track progress on the implementation of the benchmarks referred to in paragraph 21 above;

33. *Expresses* its intention to review by 31 January 2010 the mandate of UNOCI and the authorization provided to the French forces which support it, the level of troops of UNOCI and the benchmarks referred to in paragraph 21 above, in light of the progress achieved in the electoral process and in the implementation of the key steps of the peace process, and *requests* the Secretary-General to provide to it a report to this end three weeks before this date;

34. *Decides* to remain actively seized of the matter.



## Security Council

Distr.: General

5 October 2009

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### Resolution 1889 (2009)

**Adopted by the Security Council at its 6196th meeting, on  
5 October 2009**

*The Security Council,*

*Reaffirming* its commitment to the continuing and full implementation, in a mutually reinforcing manner, of resolutions 1325 (2000), 1612 (2005), 1674 (2006), 1820 (2008), 1882 (2009), 1888 (2009) and all relevant Statements of its Presidents,

*Guided* by the purposes and principles of the Charter of the United Nations, and *bearing in mind* the primary responsibility of the Security Council under the Charter for the maintenance of international peace and security,

*Recalling* the resolve expressed in the 2005 United Nations General Assembly World Summit Outcome Document (A/RES/60/1) to eliminate all forms of violence against women and girls, the obligations of States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women and the Optional Protocol thereto, the Convention on the Rights of the Child and the Optional Protocols thereto, *recalling also* the commitments contained in the Beijing Declaration and Platform for Action as well as those contained in the outcome document of the twenty-third Special Session of the United Nations General Assembly entitled “Women 2000: Gender Equality, Development and Peace for the Twenty-First Century” (A/S-23/10/Rev.1), in particular those concerning women and armed conflict,

*Having considered* the report of the Secretary General (S/2009/465) of 16 September 2009 and *stressing* that the present resolution does not seek to make any legal determination as to whether situations that are referred to in the Secretary- General's report are or are not armed conflicts within the context of the Geneva Conventions and the Additional Protocols thereto, nor does it prejudice the legal status of the non-State parties involved in these situations,

*Welcoming* the efforts of Member States in implementing its resolution 1325 (2000) at the national level, including the development of national action plans, and *encouraging* Member States to continue to pursue such implementation,

*Reiterating* the need for the full, equal and effective participation of women at all stages of peace processes given their vital role in the prevention and resolution of conflict and peacebuilding, *reaffirming* the key role women can play in re-establishing the fabric of recovering society and *stressing* the need for their involvement in the development and implementation of post-conflict strategies in order to take into account their perspectives and needs,

*Expressing* deep concern about the under-representation of women at all stages of peace processes, particularly the very low numbers of women in formal roles in mediation processes and *stressing* the need to ensure that women are appropriately appointed at decision-making levels, as high level mediators, and within the composition of the mediators' teams,

*Remaining* deeply concerned about the persistent obstacles to women's full involvement in the prevention and resolution of conflicts and participation in postconflict public life, as a result of violence and intimidation, lack of security and lack of rule of law, cultural discrimination and stigmatization, including the rise of extremist or fanatical views on women, and socio-economic factors including the lack of access to education, and in this respect, *recognizing* that the marginalization of women can delay or undermine the achievement of durable peace, security and reconciliation,

*Recognizing* the particular needs of women and girls in post-conflict situations, including, inter alia, physical security, health services including reproductive and mental health, ways to ensure their livelihoods, land and property rights, employment, as well as their participation in decision-making and postconflict planning, particularly at early stages of post-conflict peacebuilding,

*Noting* that despite progress, obstacles to strengthening women's participation in conflict prevention, conflict resolution and peacebuilding remain, *expressing concern* that women's capacity to engage in public decision making and economic recovery often does not receive adequate recognition or financing in post-conflict situations, and *underlining* that funding for women's early recovery needs is vital to increase women's empowerment, which can contribute to effective post-conflict peacebuilding,

*Noting* that women in situations of armed conflict and post-conflict situations continue to be often considered as victims and not as actors in addressing and resolving situations of armed conflict and *stressing* the need to focus not only on protection of women but also on their empowerment in peacebuilding,

*Recognizing* that an understanding of the impact of situations of armed conflict on women and girls, including as refugees and internally displaced persons, adequate and rapid response to their particular needs, and effective institutional arrangements to guarantee their protection and full participation in the peace process, particularly at early stages of post-conflict peacebuilding, can significantly contribute to the maintenance and promotion of international peace and security,

*Welcoming* the United Nations initiative to develop a system similar to that pioneered by the United Nations Development Programme to allow decision-makers to track gender-related allocations in United Nations Development Group Multi-Donor Trust Funds,

*Welcoming* the efforts of the Secretary-General to appoint more women to senior United Nations positions, particularly in field missions, as a tangible step towards providing United Nations leadership on implementation of its resolution 1325 (2000),

*Welcoming* the upcoming establishment of a United Nations Steering Committee to enhance visibility and strengthen coordination within the United Nations system regarding the preparations for the 10th anniversary of resolution 1325 (2000),

*Encouraging* relevant actors to organize events during 2009-2010 at the global, regional and national levels to increase awareness about resolution 1325 (2000), including ministerial events, to renew commitments to “Women and peace and security”, and to identify ways to address remaining and new challenges in implementing resolution 1325 (2000) in the future,

1. *Urges* Member States, international and regional organisations to take further measures to improve women’s participation during all stages of peace processes, particularly in conflict resolution, post-conflict planning and peacebuilding, including by enhancing their engagement in political and economic decision-making at early stages of recovery processes, through inter alia promoting women’s leadership and capacity to engage in aid management and planning, supporting women’s organizations, and countering negative societal attitudes about women’s capacity to participate equally;

2. *Reiterates* its call for all parties in armed conflicts to respect fully international law applicable to the rights and protection of women and girls;

3. *Strongly condemns* all violations of applicable international law committed against women and girls in situations of armed conflicts and post-conflict situations, *demands* all parties to conflicts to cease such acts with immediate effect, and *emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for all forms of violence committed against women and girls in armed conflicts, including rape and other sexual violence;

4. *Calls upon* the Secretary-General to develop a strategy, including through appropriate training, to increase the number of women appointed to pursue good offices on his behalf,



particularly as Special Representatives and Special Envoys, and to take measures to increase women's participation in United Nations political, peacebuilding and peacekeeping missions;

5. *Requests* the Secretary-General to ensure that all country reports to the Security Council provide information on the impact of situations of armed conflict on women and girls, their particular needs in post-conflict situations and obstacles to attaining those needs;

6. *Requests* the Secretary-General to ensure that relevant United Nations bodies, in cooperation with Member States and civil society, collect data on, analyze and systematically assess particular needs of women and girls in post-conflict situations, including, inter alia, information on their needs for physical security and participation in decision-making and post-conflict planning, in order to improve system-wide response to those needs;

7. *Expresses* its intention, when establishing and renewing the mandates of United Nations missions, to include provisions on the promotion of gender equality and the empowerment of women in post-conflict situations, and *requests* the Secretary-General to continue, as appropriate, to appoint gender advisors and/or women-protection advisors to United Nations missions and asks them, in cooperation with United Nations Country Teams, to render technical assistance and improved coordination efforts to address recovery needs of women and girls in postconflict situations;

8. *Urges* Member States to ensure gender mainstreaming in all post-conflict peacebuilding and recovery processes and sectors;

9. *Urges* Member States, United Nations bodies, donors and civil society to ensure that women's empowerment is taken into account during post-conflict needs assessments and planning, and factored into subsequent funding disbursements and programme activities, including through developing transparent analysis and tracking of funds allocated for addressing women's needs in the post-conflict phase;

10. *Encourages* Member States in post-conflict situations, in consultation with civil society, including women's organizations, to specify in detail women and girls' needs and priorities and design concrete strategies, in accordance with their legal systems, to address those needs and

priorities, which cover inter alia support for greater physical security and better socio-economic conditions, through education, income generating activities, access to basic services, in particular health services, including sexual and reproductive health and reproductive rights and mental health, gender-responsive law enforcement and access to justice, as well as enhancing capacity to engage in public decision-making at all levels;

11. *Urges* Member States, United Nations bodies and civil society, including non-governmental organizations, to take all feasible measures to ensure women and girls' equal access to education in post-conflict situations, given the vital role of education in the promotion of women's participation in post-conflict decisionmaking;

12. *Calls upon* all parties to armed conflicts to respect the civilian and humanitarian character of refugee camps and settlements, and ensure the protection of all civilians inhabiting such camps, in particular women and girls, from all forms of violence, including rape and other sexual violence, and to ensure full, unimpeded and secure humanitarian access to them;

13. *Calls upon* all those involved in the planning for disarmament, demobilization and reintegration to take into account particular needs of women and girls associated with armed forces and armed groups and their children, and provide for their full access to these programmes;

14. *Encourages* the Peacebuilding Commission and Peacebuilding Support Office to continue to ensure systematic attention to and mobilisation of resources for advancing gender equality and women's empowerment as an integral part of postconflict peacebuilding, and to encourage the full participation of women in this process;

15. *Request* the Secretary-General, in his agenda for action to improve the United Nations' peacebuilding efforts, to take account of the need to improve the participation of women in political and economic decision-making from the earliest stages of the peacebuilding process;

16. *Requests* the Secretary-General to ensure full transparency, cooperation and coordination of efforts between the Special Representative of the Secretary- General on Children and Armed

Conflict and the Special Representative of the Secretary General on sexual violence and armed conflict whose appointment has been requested by its resolution 1888 (2009);

17. *Requests* the Secretary-General to submit to the Security Council within 6 months, for consideration, a set of indicators for use at the global level to track implementation of its resolution 1325 (2000), which could serve as a common basis for reporting by relevant United Nations entities, other international and regional organizations, and Member States, on the implementation of resolution 1325 (2000) in 2010 and beyond;

18. *Requests* the Secretary-General, within the report requested in S/PRST/2007/40, to also include a review of progress in the implementation of its resolution 1325 (2000), an assessment of the processes by which the Security Council receives, analyses and takes action on information pertinent to resolution 1325 (2000), recommendations on further measures to improve coordination across the United Nations system, and with Member States and civil society to deliver implementation, and data on women's participation in United Nations missions;

19. *Requests* the Secretary-General to submit a report to the Security Council within 12 months on addressing women's participation and inclusion in peacebuilding and planning in the aftermath of conflict, taking into consideration the views of the Peacebuilding Commission and to include, inter alia:

- a. Analysis on the particular needs of women and girls in post-conflict situations,
- b. Challenges to women's participation in conflict resolution and peacebuilding and gender mainstreaming in all early post-conflict planning, financing and recovery processes,
- c. Measures to support national capacity in planning for and financing responses to the needs of women and girls in post-conflict situations,
- d. Recommendations for improving international and national responses to the needs of women and girls in post-conflict situations, including the development of effective financial and institutional arrangements to guarantee women's full and equal participation in the peacebuilding process,

20 *Decides* to remain actively seized of the matter.



## Security Council

Distr.: General

16 December 2010

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### Resolution 1960 (2010)

Adopted by the Security Council at its 6453<sup>rd</sup> meeting, on  
16 December 2010

*The Security Council,*

*Reaffirming* its commitment to the continuing and full implementation, in a mutually reinforcing manner, of resolutions 1325 (2000), 1612 (2005), 1674 (2006), 1820 (2008), 1882 (2009), 1888 (2009), 1889 (2009) and 1894 (2009), and all relevant statements of its President,

*Welcoming* the report of the Secretary-General of 24 November 2010 (S/2010/604), but remaining deeply concerned over the slow progress on the issue of sexual violence in situations of armed conflict in particular against women and children, and noting as documented in the Secretary-General's report that sexual violence occurs in armed conflicts throughout the world,

*Reiterating deep concern* that despite its repeated condemnation of violence against women and children in situations of armed conflict, including sexual violence in situations of armed conflict, and despite its calls addressed to all parties to armed conflict for the cessation of such acts with immediate effect, such acts continue to occur, and in some situations have become systematic and widespread, reaching appalling levels of brutality,

*Reiterating* the necessity for all States and non-State parties to conflicts to comply fully with their obligations under applicable international law, including the prohibition on all forms of sexual violence,

*Reiterating* the need for civilian and military leaders, consistent with the principle of command responsibility, to demonstrate commitment and political will to prevent sexual violence and to combat impunity and enforce accountability, and that inaction can send a message that the incidence of sexual violence in conflicts is tolerated,

*Recalling* the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes, and other egregious crimes perpetrated against civilians and, in this regard, *noting with concern* that only limited numbers of perpetrators of sexual violence have been brought to justice, while recognizing that in conflict and in post-conflict situations national justice systems may be significantly weakened,

*Welcoming* the progress made in rendering operational the team of experts to assist national authorities to strengthen the rule of law in accordance with resolution 1888 (2009); *reaffirming* the importance of deploying it rapidly to situations of particular concern with respect to sexual violence in armed conflict, working through the United Nations presence on the ground and with the consent of the host government and in this regard, *appreciating* the voluntary contributions to support its work,

*Recognizing* that States bear the primary responsibility to respect and ensure the human rights of all persons within their territory and subject to their jurisdiction as provided for by international law,

*Reaffirming* that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of civilians,

*Recalling* that international humanitarian law affords general protection to women and children as part of the civilian population during armed conflicts and special protection due to the fact that they can be placed particularly at risk,

*Reaffirming* that ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed

conflict and to prevent future such abuses, *drawing attention* to the full range of justice and reconciliation mechanisms to be considered, including national, international and “mixed” criminal courts and tribunals and truth and reconciliation commissions, and *noting* that such mechanisms can promote not only individual responsibility for serious crimes, but also peace, truth, reconciliation and the rights of the victims,

*Recalling* the inclusion of a range of sexual violence offences in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals,

*Reaffirming* the importance for States, with the support of the international community, to increase access to health care, psychosocial support, legal assistance, and socio-economic reintegration services for victims of sexual violence, in particular in rural areas, and taking into account the specific needs of persons with disabilities,

*Welcoming* the proposals, conclusions and recommendations included in the report of the Special Committee on Peacekeeping Operations (A/64/19) on the need for adequate capabilities and clear and appropriate guidelines to enable peacekeeping missions to carry out all their mandated tasks, including prevention of and response to sexual violence; *stressing* the importance of ensuring engagement by senior mission leadership on protection of civilians, including the prevention of and response to instances of sexual violence in armed conflict, with a view to ensuring that all mission components and all levels of the chain of command are properly informed of and involved in the mission’s mandate and their relevant responsibilities; *welcoming* progress made by the Secretary-General in developing operational tools for the implementation of protection of civilians mandates; and *encouraging* troop- and police-contributing countries to make full use of and provide feedback on these important materials,

*Recognizing* the efforts of the Secretary-General to address the underrepresentation of women in formal peace processes, the lack of mediators and ceasefire monitors with proper training in dealing with sexual violence, and the lack of women as Chief or Lead peace mediators in United Nations-sponsored peace talks; and *encouraging* further such efforts,

*Welcoming* the inclusion of women in peacekeeping missions in civil, military and police functions, *recognizing* that their presence may encourage women from local communities to report acts of sexual violence,

*Having considered* the report of the Secretary-General of 24 November 2010 (S/2010/604) and *stressing* that the present resolution does not seek to make any legal determination as to whether situations that are referred to in the Secretary-General's report are or are not armed conflicts within the context of the Geneva Conventions and the Additional Protocols thereto, nor does it prejudge the legal status of non-State parties involved in these situations,

1. *Reaffirms* that sexual violence, when used or commissioned as a tactic of war or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate and prolong situations of armed conflict and may impede the restoration of international peace and security; *affirms* in this regard that effective steps to prevent and respond to such acts of sexual violence can significantly contribute to the maintenance of international peace and security; and *expresses its readiness*, when considering situations on the agenda of the Council, to take, where necessary, appropriate steps to address widespread or systematic sexual violence in situations of armed conflict;

2. *Reiterates* its demand for the complete cessation with immediate effect by all parties to armed conflict of all acts of sexual violence;

3. *Encourages* the Secretary-General to include in his annual reports submitted pursuant to resolutions 1820 (2008) and 1888 (2009) detailed information on parties to armed conflict that are credibly suspected of committing or being responsible for acts of rape or other forms of sexual violence, and to list in an annex to these annual reports the parties that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda; *expresses* its intention to use this list as a basis for more focused United Nations engagement with those parties, including, as appropriate, measures in accordance with the procedures of the relevant sanctions committees;

4. *Requests* the Secretary-General, in accordance with the present resolution and taking into account its specificity, to apply the listing and de-listing criteria for parties listed in his annual report on sexual violence in armed conflict consistent with paragraphs 175, 176, 178, and 180 of his report A/64/742-S/2010/181;

5. *Calls upon* parties to armed conflict to make and implement specific and time-bound commitments to combat sexual violence, which should include, inter alia, issuance of clear orders through chains of command prohibiting sexual violence and the prohibition of sexual violence in Codes of Conduct, military field manuals, or equivalent; and *further calls upon* those parties to make and implement specific commitments on timely investigation of alleged abuses in order to hold perpetrators accountable;

6. *Requests* the Secretary-General to track and monitor implementation of these commitments by parties to armed conflict on the Security Council's agenda that engage in patterns of rape and other sexual violence, and regularly update the Council in relevant reports and briefings;

7. *Reiterates* its intention, when adopting or renewing targeted sanctions in situations of armed conflict, to consider including, where appropriate, designation criteria pertaining to acts of rape and other forms of sexual violence; and *calls upon* all peacekeeping and other relevant United Nations missions and United Nations entities, in particular the Working Group on Children and Armed Conflict, the Special Representative of the Secretary General for Children and Armed Conflict, and the Special Representative of the Secretary General on Sexual Violence in Conflict, to share with relevant United Nations Security Council Sanctions Committees, including through relevant United Nations Security Council Sanction Committees' monitoring groups and groups of experts, all pertinent information about sexual violence;

8. *Requests* the Secretary General to establish monitoring, analysis and reporting arrangements on conflict-related sexual violence, including rape in situations of armed conflict and post-conflict and other situations relevant to the implementation of resolution 1888 (2009), as appropriate, and taking into account the specificity of each country, that ensure a coherent and coordinated approach at the field-level, and *encourages* the Secretary-General to engage with



United Nations actors, national institutions, civil society organizations, health-care service providers, and women's groups to enhance data collection and analysis of incidents, trends, and patterns of rape and other forms of sexual violence to assist the Council's consideration of appropriate actions, including targeted and graduated measures, while respecting fully the integrity and specificity of the monitoring and reporting mechanism implemented under Security Council resolutions 1612 (2005) and 1882 (2009) on children and armed conflict;

9. *Requests* the Secretary-General to continue to ensure full transparency, cooperation and coordination of efforts between the Special Representative of the Secretary-General for Children and Armed Conflict and the Special Representative of the Secretary-General on Sexual Violence in Conflict;

10. *Welcomes* the work of gender advisers; looks forward to the appointment of more women protection advisers to peacekeeping missions, in accordance with resolution 1888 (2009); notes their potential contribution in the framework of the monitoring, analysis, and reporting arrangements to be established pursuant to OP8 of the present resolution;

11. *Welcomes* the elaboration by the Secretary-General of scenario-based training materials on combating sexual violence for peacekeepers and *encourages* Member States to use them as a reference for the preparation and deployment of United Nations peacekeeping operations;

12. *Underlines* that, in order to carry out their mandate, missions must communicate effectively with local communities; and encourages the Secretary-General to improve their capacity to do so;

13. *Expresses its intention* to give due consideration to sexual violence in mandate authorizations and renewals and to request the Secretary-General to include, as appropriate, gender expertise in technical assessment missions;

14. *Encourages* the entities comprising United Nations Action Against Sexual Violence in Conflict, as well as other relevant parts of the United Nations system, to continue to support the work of the aforementioned Special Representative of the Secretary-General on Sexual Violence in Conflict and to enhance cooperation and information-sharing among all relevant stakeholders

in order to reinforce coordination and avoid overlap at the headquarters and country levels and improve system-wide response;

15. *Encourages* Member States to deploy greater numbers of female military and police personnel to United Nations peacekeeping operations, and to provide all military and police personnel with adequate training on sexual and gender-based violence, inter alia, to carry out their responsibilities;

16. *Requests* the Secretary-General to continue and strengthen efforts to implement the policy of zero tolerance on sexual exploitation and abuse by United Nations peacekeeping and humanitarian personnel, and *further requests* the Secretary-General to continue to provide and deploy guidance on addressing sexual violence for predeployment and inductive training of military and police personnel, and to assist missions in developing situation-specific procedures to address sexual violence at the field level and to ensure that technical support is provided to troop and police contributing countries in order to include guidance for military and police personnel on addressing sexual violence in predeployment and induction training;

17. *Invites* the Special Representative on Sexual Violence in Conflict to continue to provide briefings on sexual violence, in accordance with resolution 1888 (2009);

18. *Requests* that the Secretary-General continue to submit annual reports to the Council on the implementation of Resolutions 1820 (2008) and 1888 (2009) and to submit his next report by December 2011 on the implementation of Resolutions 1820 (2008) and 1888 (2009) and the present resolution to include, inter alia:

(a) a detailed coordination and strategy plan on the timely and ethical collection of information;

(b) information on progress made in the implementation of the monitoring, analysis, and reporting arrangements mentioned in paragraph 8;

(c) detailed information on parties to armed conflict that are credibly suspected of committing or being responsible for acts of rape or other forms of sexual violence, and an annex with a list of parties that are credibly suspected of committing or being responsible for patterns

of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda;

(d) updates on efforts by United Nations Mission focal points on sexual violence to work closely with Resident Coordinator/Humanitarian Coordinator (RC/HC), the United Nations Country Team, and, where appropriate, the Special Representative of the Secretary-General for Children and Armed Conflict and the Special Representative of the Secretary-General on Sexual Violence in Conflict and/or the Team of Experts, to address sexual violence;

19. *Decides* to remain actively seized of the matter.

## **Appendix VII**



## **PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA**



## **PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA**

The States Parties to this Protocol,

**CONSIDERING** that Article 66 of the African Charter on Human and Peoples' Rights provides for special protocols or agreements, if necessary, to supplement the provisions of the African Charter, and that the Assembly of Heads of State and Government of the Organization of African Unity meeting in its Thirty-first Ordinary Session in Addis Ababa, Ethiopia, in June 1995, endorsed by resolution AHG/Res.240 (XXXI) the recommendation of the African Commission on Human and Peoples' Rights to elaborate a Protocol on the Rights of Women in Africa;

**CONSIDERING** that Article 2 of the African Charter on Human and Peoples' Rights enshrines the principle of non-discrimination on the grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

**FURTHER CONSIDERING** that Article 18 of the African Charter on Human and Peoples' Rights calls on all States Parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions;

**NOTING** that Articles 60 and 61 of the African Charter on Human and Peoples' Rights recognise regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as being important reference points for the application and interpretation of the African Charter;

**RECALLING** that women's rights have been recognised and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the African Charter on the Rights and Welfare of the Child, and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights;

**NOTING** that women's rights and women's essential role in development, have been reaffirmed in the United Nations Plans of Action on the Environment and Development in 1992, on Human Rights in 1993, on Population and Development in 1994 and on Social Development in 1995;

**RECALLING ALSO** United Nations Security Council's Resolution 1325 (2000) on the role of Women in promoting peace and security;



**REAFFIRMING** the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions and Decisions, which underline the commitment of the African States to ensure the full participation of African women as equal partners in Africa's development;

**FURTHER NOTING** that the African Platform for Action and the Dakar Declaration of 1994 and the Beijing Platform for Action of 1995 call on all Member States of the United Nations, which have made a solemn commitment to implement them, to take concrete steps to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender-based violence against women;

**RECOGNISING** the crucial role of women in the preservation of African values based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy;

**BEARING IN MIND** related Resolutions, Declarations, Recommendations, Decisions, Conventions and other Regional and Sub-Regional Instruments aimed at eliminating all forms of discrimination and at promoting equality between women and men;

**CONCERNED** that despite the ratification of the African Charter on Human and Peoples' Rights and other international human rights instruments by the majority of States Parties, and their solemn commitment to eliminate all forms of discrimination and harmful practices against women, women in Africa still continue to be victims of discrimination and harmful practices;

**FIRMLY CONVINCED** that any practice that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated;

**DETERMINED** to ensure that the rights of women are promoted, realised and protected in order to enable them to enjoy fully all their human rights;

**HAVE AGREED AS FOLLOWS:**

#### **Article 1 Definitions**

For the purpose of the present Protocol:

- (a) "African Charter" means the African Charter on Human and Peoples' Rights;
- (b) "African Commission" means the African Commission on Human and Peoples' Rights;
- (c) "Assembly" means the Assembly of Heads of State and Government of the African Union;



- (d) “AU” means the African Union;
- (e) “Constitutive Act” means the Constitutive Act of the African Union;
- (f) "Discrimination against women" means any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life;
- (g) "Harmful Practices" means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity;
- (h) “NEPAD” means the New Partnership for Africa’s Development established by the Assembly;
- (i) "States Parties" means the States Parties to this Protocol;
- (j) "Violence against women" means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war; k) “Women” means persons of female gender, including girls.

## **Article 2**

### **Elimination of Discrimination Against Women**

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
  - a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
  - b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;
  - c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
  - d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;



- e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.

2. States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.

### **Article 3 Right to Dignity**

1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.
2. Every woman shall have the right to respect as a person and to the free development of her personality.
3. States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.
4. States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

### **Article 4 The Rights to Life, Integrity and Security of the Person**

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.
2. States Parties shall take appropriate and effective measures to:
  - a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
  - b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
  - c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;





- d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;
- e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
- f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;
- g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
- h) prohibit all medical or scientific experiments on women without their informed consent;
- i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
- j) ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;
- k) ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.

#### **Article 5** **Elimination of Harmful Practices**

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

- (a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;
- (b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;
- (c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make them self-supporting;
- (d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.



## **Article 6 Marriage**

States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

- a) no marriage shall take place without the free and full consent of both parties;
- b) the minimum age of marriage for women shall be 18 years;
- c) monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;
- d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;
- e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
- f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname;
- g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;
- h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;
- i) a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
- j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

## **Article 7 Separation, Divorce and Annulment of Marriage**

States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that:

- a) separation, divorce or annulment of a marriage shall be effected by judicial order;
- b) women and men shall have the same rights to seek separation, divorce or annulment of a marriage;
- c) in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance;
- d) in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.



**Article 8**  
**Access to Justice and Equal Protection before the Law**

Women and men are equal before the law and shall have the right to equal protection and benefit of the law. States Parties shall take all appropriate measures to ensure:

- a) effective access by women to judicial and legal services, including legal aid;
- b) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid;
- c) the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women;
- d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights;
- e) that women are represented equally in the judiciary and law enforcement organs;
- f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

**Article 9**  
**Right to Participation in the Political and Decision-Making Process**

1. States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:

- a) women participate without any discrimination in all elections;
- b) women are represented equally at all levels with men in all electoral processes;
- c) women are equal partners with men at all levels of development and implementation of State policies and development programmes .

2. States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

**Article 10**  
**Right to Peace**

1. Women have the right to a peaceful existence and the right to participate in the promotion and maintenance of peace.

2. States Parties shall take all appropriate measures to ensure the increased participation of women:

- a) in programmes of education for peace and a culture of peace;



- b) in the structures and processes for conflict prevention, management and resolution at local, national, regional, continental and international levels;
- c) in the local, national, regional, continental and international decision making structures to ensure physical, psychological, social and legal protection of asylum seekers, refugees, returnees and displaced persons, in particular women;
- d) in all levels of the structures established for the management of camps and settlements for asylum seekers, refugees, returnees and displaced persons, in particular, women;
- e) in all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation.

3. States Parties shall take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.

### **Article 11** **Protection of Women in Armed Conflicts**

1. States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women.

2. States Parties shall, in accordance with the obligations incumbent upon them under international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.

3. States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.

4. States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.

### **Article 12** **Right to Education and Training**

1. States Parties shall take all appropriate measures to:
  - (a) eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;
  - (b) eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination;



- (c) protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;
  - (d) provide access to counseling and rehabilitation services to women who suffer abuses and sexual harassment;
  - (e) integrate gender sensitisation and human rights education at all levels of education curricula including teacher training.
2. States Parties shall take specific positive action to:
- (a) promote literacy among women;
  - (b) promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology;
  - (c) promote the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely.

### **Article 13**

#### **Economic and Social Welfare Rights**

States Parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. In this respect, they shall:

- a) promote equality of access to employment;
- b) promote the right to equal remuneration for jobs of equal value for women and men;
- c) ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace;
- d) guarantee women the freedom to choose their occupation, and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognised and guaranteed by conventions, laws and regulations in force;
- e) create conditions to promote and support the occupations and economic activities of women, in particular, within the informal sector;
- f) establish a system of protection and social insurance for women working in the informal sector and sensitise them to adhere to it;
- g) introduce a minimum age for work and prohibit the employment of children below that age, and prohibit, combat and punish all forms of exploitation of children, especially the girl-child;
- h) take the necessary measures to recognise the economic value of the work of women in the home;
- i) guarantee adequate and paid pre- and post-natal maternity leave in both the private and public sectors;
- j) ensure the equal application of taxation laws to women and men;
- k) recognise and enforce the right of salaried women to the same allowances and entitlements as those granted to salaried men for their spouses and children;



- l) recognise that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the State and the private sector have secondary responsibility;
- m) take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

#### **Article 14**

##### **Health and Reproductive Rights**

1. States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes:
  - a) the right to control their fertility;
  - b) the right to decide whether to have children, the number of children and the spacing of children;
  - c) the right to choose any method of contraception;
  - d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
  - e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices;
2. States Parties shall take all appropriate measures to:
  - a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas;
  - b) establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;
  - c) protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.

#### **Article 15**

##### **Right to Food Security**

States Parties shall ensure that women have the right to nutritious and adequate food. In this regard, they shall take appropriate measures to:

- a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food;
- b) establish adequate systems of supply and storage to ensure food security.



**Article 16**  
**Right to Adequate Housing**

Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.

**Article 17**  
**Right to Positive Cultural Context**

1. Women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies.
2. States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.

**Article 18**  
**Right to a Healthy and Sustainable Environment**

1. Women shall have the right to live in a healthy and sustainable environment.
2. States Parties shall take all appropriate measures to:
  - a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;
  - b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control;
  - c) protect and enable the development of women's indigenous knowledge systems;
  - d) regulate the management, processing, storage and disposal of domestic waste;
  - e) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

**Article 19**  
**Right to Sustainable Development**

Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to:

- a) introduce the gender perspective in the national development planning procedures;
- b) ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;



- c) promote women's access to and control over productive resources such as land and guarantee their right to property;
- d) promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women;
- e) take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes; and
- f) ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.

### **Article 20 Widows' Rights**

States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

- a) that widows are not subjected to inhuman, humiliating or degrading treatment;
- b) that a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;
- c) that a widow shall have the right to remarry, and in that event, to marry the person of her choice.

### **Article 21 Right to Inheritance**

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.

### **Article 22 Special Protection of Elderly Women**

The States Parties undertake to:

- a) provide protection to elderly women and take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training;
- b) ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.





### **Article 23**

#### **Special Protection of Women with Disabilities**

The States Parties undertake to:

- a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making;
- b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

### **Article 24**

#### **Special Protection of Women in Distress**

The States Parties undertake to:

- a) ensure the protection of poor women and women heads of families including women from marginalized population groups and provide an environment suitable to their condition and their special physical, economic and social needs;
- b) ensure the right of pregnant or nursing women or women in detention by providing them with an environment which is suitable to their condition and the right to be treated with dignity.

### **Article 25**

#### **Remedies**

States Parties shall undertake to:

- a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated;
- b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

### **Article 26**

#### **Implementation and Monitoring**

1. States Parties shall ensure the implementation of this Protocol at national level, and in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights herein recognised.

2. States Parties undertake to adopt all necessary measures and in particular shall provide budgetary and other resources for the full and effective implementation of the rights herein recognised.



### **Article 27 Interpretation**

The African Court on Human and Peoples' Rights shall be seized with matters of interpretation arising from the application or implementation of this Protocol.

### **Article 28 Signature, Ratification and Accession**

1. This Protocol shall be open for signature, ratification and accession by the States Parties, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the AU.

### **Article 29 Entry into Force**

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15) instrument of ratification.
2. For each State Party that accedes to this Protocol after its coming into force, the Protocol shall come into force on the date of deposit of the instrument of accession.
3. The Chairperson of the Commission of the AU shall notify all Member States of the coming into force of this Protocol.

### **Article 30 Amendment and Revision**

1. Any State Party may submit proposals for the amendment or revision of this Protocol.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.
3. The Assembly, upon advice of the African Commission, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this article.
4. Amendments or revision shall be adopted by the Assembly by a simple majority.



5. The amendment shall come into force for each State Party, which has accepted it thirty (30) days after the Chairperson of the Commission of the AU has received notice of the acceptance.

**Article 31**  
**Status of the Present Protocol**

None of the provisions of the present Protocol shall affect more favourable provisions for the realisation of the rights of women contained in the national legislation of States Parties or in any other regional, continental or international conventions, treaties or agreements applicable in these States Parties.

**Article 32**  
**Transitional Provisions**

Pending the establishment of the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights shall be seized with matters of interpretation arising from the application and implementation of this Protocol.

**Adopted by the 2nd Ordinary Session**  
**of the Assembly of the Union**

**Maputo, 11 July 2003**