

and Their Discriminatory Effects on Women

by Pamela O. Davies

IN JANUARY 2002, THE CIVIL WAR IN SIERRA LEONE officially came to an end after eleven years of ferocious fighting. Widespread killing of civilians, destruction of property, forcible conscription into the rebel ranks, mutilation, and extensive internal and external displacement characterized the war. According to reports, some 90,000 Sierra Leoneans became refugees in neighboring countries and 158,000 were displaced internally.

The rebels initiated the civil war on behalf of the civilian populace, but civilians soon became the very targets of the rebels' aggression. The most vulnerable people were those in rural areas, particularly women and children. Even prior to the civil war, unequal opportunities for social and economic development and 35 years of government policies providing inadequate legal protection marginalized women and children. Moreover, customs and traditions relegated women to inferior roles and status within the society. As a result, women were the prime targets and greatest victims in the war. Although the war is over, women continue to suffer under discriminatory laws. Now, however, as the country reconstitutes itself, Sierra Leone has a prime opportunity to revise its legal code to ensure women equal status and protections under the law.

This article argues for constitutional revisions to ensure women equal protection under Sierra Leonean law, focusing on marriage, divorce, and inheritance provisions. The article first examines the violence that women suffered during the civil war. It then outlines the development and provisions of discriminatory marriage, divorce, and inheritance laws affecting women. It describes the negative impact these laws have had on women and argues that such laws violate international treaties to which Sierra Leone is party. Finally, this article describes the recommendations of Sierra Leone's Truth and Reconciliation Commission and urges the government to make immediate reforms rejecting discriminatory laws and upholding women's rights.

VIOLENCE AGAINST WOMEN

HUMAN RIGHTS WATCH REPORTED THAT THE WAR in Sierra Leone was characterized by "widespread and systematic violence against women and girls." Women were raped, abducted, and forced into slave-like bondage by male rebels. The rebels commonly forced women to transport items, steal, cook, and serve as combatants. Women were forced to witness the mutilation of their family members. Witnesses reported extreme brutality against women, often preceded or followed by violence against other family members, all geared towards terrorizing, humiliating, punishing, and ultimately controlling the civilian population.

Many women and girls died from sexual violence. Those who survived often became pregnant or contracted sexually transmitted diseases, such as HIV/AIDS. Survivors faced psychological trauma as a result of forced impregnation and ostracism by their families and communities.

The end of the civil war has not brought peace to Sierra Leonean women. Women continue to suffer all forms of sexual, physical, and psychological violence in the form of rape, battery, and threats to their well-being and security. Customary cultural practices relegate women to a second-class role. The government has failed to change constitutional, statutory, and customary laws that discriminate against women, especially in marriage, divorce, and inheritance.

MARRIAGE AND INHERITANCE UNDER THE CURRENT LEGAL STRUCTURE

SIERRA LEONE'S PLURALISTIC LEGAL SYSTEM is the product of numerous outside influences over the last two-and-a-half centuries. Under Sierra Leone's 1991 Constitution, domestic law is comprised of: "(a) this Constitution; (b) laws made by or under the authority of Parliament as established by this Constitution; (c) any orders, rules, regulations and other statutory instruments made by any person or authority pursuant to a power conferred in that behalf by this Constitution or any other law; (d) the existing law; and (e) the common law." The Constitution also outlaws discrimination on the basis of sex. Outside of the western region of the country, most groups rely primarily on Islamic law and customary law, but Islamic and customary law are not subject to the non-discrimination clause in the Constitution, nor is customary law codified.



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Sierra Leonean women are accorded unequal legal protections.

Individuals are governed on the basis of their personal law. An individual's personal law is determined by whether he or she is a native, governed by customary law, or a non-native, governed by the general law. This distinction dates to the colonial period when the British protectorate distinguished "natives" from "non-natives," who were largely newly-arrived former slaves from the United States, England, and Jamaica. This distinction still applies today, especially regarding estate administration and land acquisition.

The struggle for equal legal protection for Sierra Leonean women pre-dates Sierra Leone's independence from the British in 1961. During constitutional talks between the British government and the Sierra Leonean delegation, the Sierra Leone Women's

Pamela O. Davies is a private legal practitioner from Sierra Leone and a Humphrey Fellow at the Washington College of Law.

Movement filed a petition demanding that the new Constitution guarantee women's political, economic, and social rights and reform the laws that were discriminatory to women. The emerging government ignored these petitions and, to date, Sierra Leonean women continue to suffer unequal legal protections in violation of international law.

THE GENERAL LAW

Two statutes, the Christian Marriage Act and the Civil Marriage Act, govern marriage under the general law. These laws, modified by several amendments, provide for monogamous marriage and spell out the formal requirements for a valid legal marriage.

The division of property after the death of a spouse in a monogamous marriage is determined by whether the deceased executed a valid will under the provisions of the Wills Act of 1837, or whether he died intestate. The right to execute a valid will applies to natives, non-natives, and Muslims. Under the Wills Act, a testator can devise his estate to whomever he pleases, as long as he complies with the formal requirements for execution. If there is a defect, however, the will is null and void and the estate is administered as an intestate estate.

The Administration of Estates Act of 1960 governs intestate estates. Under this Act, when a man dies intestate, his wife is entitled to one-third of his estate and his legitimate children to the remaining two-thirds. Illegitimate children are not automatically

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Under the Christian and Civil Marriage Acts, mutual consent of the parties is required. Neither of the parties may have a prior, existing marriage. A person who had contracted a prior, existing marriage under customary law could not then marry under the Christian Marriage Act, although this practice was permissible before 1965, when customary marriage was not recognized as valid. The Civil Marriage Act is silent on this issue. The problem with these Acts is that there are no provisions for the registration of customary law marriages and, though a man with an existing marriage commits bigamy under any of these statutes and can face seven years imprisonment if he remarries under any of these provisions, he still can contract several valid customary marriages while already married without incurring any criminal or civil liability. Under either of the statutes, he cannot contract a legally valid Islamic marriage while already married, but in practice, it is not uncommon for men to do so.

The amended Matrimonial Causes Act of 1960 regulates divorce in monogamous marriages. The grounds for divorce are adultery, desertion for a period of up to three years prior to the divorce petition, and cruelty. The desertion requirement of three years may be dispensed with only if the petitioner can show extreme hardship and depravity. The woman may also petition for divorce if, since the time of the marriage, the husband committed rape, sodomy, or cruelty.

There are three absolute bars to a grant of divorce: (1) connivance, where the petitioner pretended ignorance of the respondent's actions, such as adultery; (2) collusion, where the parties actually agreed to petition for divorce; and (3) condonation, where the petitioner condoned the respondent's actions, such as adultery or cruelty. A discretionary bar to granting divorce is undue delay in prosecuting the petition. Furthermore, even if the petitioner establishes a case, the petition must be dismissed if the other party proves any of these bars exist.

entitled to a share of their father's estate, although they can apply for a share and the court has discretion to grant such an application on moral or equitable grounds. If there are not any children from the marriage, the deceased's parents or siblings are entitled to the other two-thirds of the estate. Conversely, if a married woman dies intestate, her entire estate goes to her husband.

ISLAMIC LAW

The Mohammedan Marriage Act of 1960 provides very little for the regulation of Muslim marriages. It merely recognizes such marriages as valid and requires the registration of marriages and divorces under Islamic law. The Act does not provide for divorce, which is left to Islamic leaders to determine in accordance with Islamic codes.

Under Islamic law, a Muslim man is permitted to marry up to four wives. In the case of intestacy, his eldest son or, in the absence of such, his brother, is entitled to administer his estate. The wife is entitled to one-fourth of the estate if there are children of the marriage and one-eighth if there are none. His parents and siblings are entitled to the remainder of the estate. A woman married under Islamic law can execute a will, but if she dies intestate, her entire estate goes to her husband.

CUSTOMARY LAW

In Sierra Leone, customary law is comprised of intrinsic, equitable rules that have developed over time. Tribal chiefs and councils of elders generally apply customary law in local courts. The Ministry of Interior, part of the executive branch, administers these local courts. The local courts exist independently of the judiciary, and lawyers cannot participate in their proceedings. The local District Appeals Court reviews initial appeals from these local courts.

The Local Appeals division of the High Court, the Court of Appeals, and finally the Supreme Court hear subsequent appeals.

Customary law is not codified and does not provide uniform rules or procedures governing marriage, which vary from one ethnic group to another. A customary law marriage requires the consent of the wife's family; otherwise the marriage is null and void. Under customary law, a man can marry as many wives as he desires and can afford. The common feature is the requirement of a dowry, which may take the form of a monetary payment or a promise to perform future services to the wife's parents. The payment of a *kola*, monetary consideration for the woman's hand in marriage, is usually distributed among the wife's family and, in the event of a divorce, should be returned to the husband. Customary law regards the wife as inferior to the husband and, in most cases, considers her to be a part of his property.

The grounds for divorce under customary law are unspecified but include infertility, disobedience, and suspected adultery. The wife may petition for divorce on the grounds of extreme cruelty or, in some cases, if the husband stops showing a sexual interest in her.

Under customary law, the wife is not entitled to inherit her late husband's estate. In some cases, customary law treats the wife as property to be passed on to one of the brothers of the deceased under a custom called "widow inheritance." She is usually at the mercy of the deceased's family, who may even have a right to custody of the children and ownership of the matrimonial home. In cases where there are no children from the marriage, she may have to leave the matrimonial home and return to her family home, despite her contributions to the marriage.

EFFECTS OF DISCRIMINATORY LAWS ON WOMEN

A WOMAN MARRIED UNDER CUSTOMARY LAW has no legal protections in the event that she is driven from the matrimonial home or her spouse dies, regardless of the duration of the marriage or her contributions to the matrimonial home. She is not automatically entitled to any share of the deceased husband's estate, and the concept of alimony or spousal support in the event of a divorce is unknown. In most cases where there are children from the marriage, the husband automatically gains custody of them or his family usually demands custody upon his death. Although women commonly own property today, customary law regards such personal property as belonging to the husband. Women may draw valid wills to protect their property, but few women are aware of this right. Therefore, in the all too common event of a wife's death intestate, the husband is entitled to all of her property.

In practice, there are few distinctions between the situation of women married under customary law and Islamic law. Neither provides for equitable distribution of the marital property upon divorce or the husband's death. Under customary law, a woman is not legally entitled to any share of the matrimonial property. Under Islamic law, a woman is entitled to a fair distribution of matrimonial property with proof of her contributions, but in practice this proof may prove difficult to obtain. In some other respects, however, Islamic law offers more protection to women because it recognizes their

right to own property, which is not recognized under customary law. Also, there are provisions under Islamic law for the wife to receive maintenance after divorce for as long as she remains unmarried, as well as assistance for any children from the marriage.

The situation is slightly better for women married under either of the statutory marriage provisions. Unlike Islamic or customary law, women may obtain equitable distribution of the marital property during divorce proceedings, and all specific relief is usually spelled out in the petition. Statutory law is also different from customary law because women have the right to acquire personal property. In contrast to customary law, women can do whatever they want with their personal property acquired and owned in their names while they are alive. Under the statutory marriage provisions, however, if the husband dies intestate, the wife only receives one-third of the estate. Conversely, the law provides that the husband is entitled to the wife's entire estate if she dies intestate.

CURRENT LAWS VIOLATE WOMEN'S RIGHTS UNDER APPLICABLE INTERNATIONAL LAW

SIERRA LEONE'S DISCRIMINATORY MARRIAGE, divorce, and inheritance laws are not consistent with its obligations under international treaties. Article 10 of the International Covenant on Civil and Political Rights (ICCPR), which Sierra Leone ratified in 1996, provides that marriage should be entered into with the free and full consent of the intending spouses. Article 23(4) of the ICCPR provides that "States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children." Despite Sierra Leone's ratification of the ICCPR, Sierra Leonean women are married every day without their consent.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified in 1988, requires States Parties to eliminate all forms of discrimination against women. Article 2 of CEDAW directs States Parties to adopt legislative measures embodying the principle of equality for men and women. Specifically, Article 2(f) requires States Parties "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women." Other CEDAW protections against discrimination in marriage and family matters are found in Articles 5 (the elimination of discrimination in cultural practices and education), 15 (equality before the law), and 16 (the elimination of discrimination in marriage and family relations). Sierra Leone has ratified several other international treaties that prohibit the unequal treatment of men and women, including the Universal Declaration of Human

Rights, the Covenant for the Protection of Human Rights and Fundamental Freedoms, the African Charter, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

Section 15 and Section 27(1) of the Sierra Leonean Constitution incorporate similar provisions and provide that no law shall make any provision that is discriminatory in law or effect. These



Courtesy of author

Under customary law, when a woman's husband dies, she is at the mercy of her deceased husband's family.

provisions, however, are subject to subsections (4), (5), and (7) of Section 27. Section 27(4) states that protections under Section (27)(1) do not “apply to any law so far as that law makes provision with respect to adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law.” Allowing customary laws to take precedence over the Constitution, Section 27(4) further provides that Section 27(1) does not apply to “members of a particular race or tribe or customary law.” In effect, Parliament revoked the legal protections against discrimination that it purports to accord all Sierra Leonean women, particularly in the areas of marriage, divorce, and inheritance. Section 27 thus provides a vast loophole for legal discrimination against women in violation of Sierra Leone’s international legal obligations.

INSTITUTIONS OF TRANSITIONAL JUSTICE

FOLLOWING THE END OF THE CIVIL WAR, two main transitional justice institutions emerged, the Special Court for Sierra Leone and the Truth and Reconciliation Commission (Commission). The Commission concluded its findings on atrocities committed during the civil war and submitted its 100-page report to the Sierra Leonean government in October 2004.

In its report, the Commission recognized that women and girls suffered before, during, and after the civil war. It called for the dismantling of a system that allows for discrimination and for the repeal of all statutory and customary laws, including marriage, divorce, inheritance, and property laws, that are discriminatory in law or effect. Among the Commission’s imperative recommendations are the repeal of Section 27(4) of the Constitution, and the reform and codification of customary and Islamic law in conformity with CEDAW and the ICCPR. The Commission called for the establishment of a new Constitution that would enshrine human dignity as a fundamental right and preclude race and gender as considerations in the acquisition of citizenship. The Commission also called on the government to ratify the Protocol to the African Charter on the Rights of Women and requested that all factions of the civil war issue a full and frank apology to women for the abuses they sustained in the conflict. The government, however, has not responded to the Commission’s calls for action.

CONCLUSION

THE DISCRIMINATORY EFFECTS of the different systems of law in Sierra Leone are striking, and now is the time for reforms. The need for urgent reform and codification in the fields of marriage, divorce, and inheritance cannot be overemphasized. Women’s rights advocates hope that the Commission’s recommendations will pave the way for women to be treated as equals to their male counterparts. As a first step, the government should repeal Section 27(4) of the Constitution. Additionally, reforms should specify a minimum age for marriage; require the full consent of the intending spouse; provide protections for children born out of wed-lock; codify customary law marriages; protect women’s property and inheritance rights; and provide equal rights in the case of dissolution of marriage, which should be gender-neutral and reflect the monetary value of a woman’s contributions to the marriage. The tasks ahead are difficult but not insurmountable, and with the appropriate political will, women in Sierra Leone will one day attain a level of equality with men.

The Commission called for the widest possible dissemination of its report to all Sierra Leoneans, literate and illiterate, in local languages. As of this writing, however, the government of President Ahmed Tejan-Kabba failed to release publicly the full Commission report submitted to it in October 2004. One speculated reason for this delay is that the government is worried about the public’s reaction to the findings and recommendations, some of which are certainly unfavorable to the government. Immediate compliance with the Commission’s recommendation will serve to further women’s current demands for reform or repeal of laws that discriminate against them. This cry for women’s rights has gone unheard by one government after the other over the last four decades. Now is the time, in the true spirit of nation-building, learning from mistakes of the past, healing, and development, to heed this cry.

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