UNIVERSITY OF LONDON

SCHOOL OF ADVANCED STUDY

PhD

Supervisors: Prof. Alexandra Xanthaki and Prof. Avrom Sherr

“CHASED AWAY FROM HOME”: BUSH WIVES OF SIERRA LEONE, PATRIARCHY AND TRANSITIONAL JUSTICE.

Ufuoma Lamikanra

1 October 2023

Declaration

I certify that this thesis is my own work and is based on research conducted while I was a registered student for the Degree of Doctor of Philosophy in Law, Institute of Advanced Legal Studies, School of Advanced Study, University of London.

Ufuoma LAMIKANRA

Date: 1 October 2023

Dedication

To my dear friend Mrs Hajara Omuya, who changed mortality for immortality on 21st March, 2024. I look forward to the day we shall meet again.

Acknowledgements

Now to the King eternal, immortal, invisible, the only God, be honor and glory forever and ever, Amen. I could never have completed this project without His help.

I also wish to acknowledge the kind assistance of the following persons who were used by God in various ways to make my dream come true. I owe a special debt to my supervisors: Prof. Alexandra Xanthaki for her patience, support, encouragement and guidance, and Prof. Avrom Sherr for his encouragement at a difficult period of this project. I must also appreciate Prof. Lisa Webley, whose generous support enabled me to smoothly navigate a difficult aspect of my thesis.

I am indebted to Dr. Ahmet Osman who went out of his way to help me throughout my studies. My thanks to all the staff at NIALS library, particularly Mr. Narayana Harave, for their constant willingness to help.

A special feeling of gratitude to: my husband, Dr. Oludotun Lamikanra who encouraged and supported me throughout this programme; my brother, Mr. Felix Edjeren for his invaluable editing skills and my children, Oluwatoyin, Olaoluwatomi and Kolawole who were always there for me, on this long academic journey.

I am very grateful to Pastor Pax Uwoghiren without whose immeasurable aid it would have been very difficult for me to meet my deadlines. I also wish to appreciate Pastor Temiloluwa Dosunmu, Mr. Kolapo Odunewu, Ms. Lydia Edia and Ms. Adesayo Sunmoni for their assistance.

God bless you ALL.

Abstract

The eleven years long war in Sierra Leone ended in January 2002, but some of the young girls and women who were abducted and made wives of rebel fighters remained with or returned to their ex-abductor-husbands. The experiences of the returners (commonly known as bush wives) have fallen between the analytical gaps of the two most relevant approaches to gender justice: feminists' theories on transitional justice and women's human rights regimes. The research seeks to prove that the bush wives who stayed or returned to their bush husbands did not consent to these new unions but were compelled to do so because of coercive patriarchal norms and attitudes.

By analysing the bush wives' experiences from the existing literature and their voices, the thesis attempts to identify what transitional justice means to victims of sexual violence. The research found that patriarchy was a major contributory factor to the discriminatory post-conflict experiences of the bush wives. The findings supported the main argument of this thesis which is that the transitional justice processes accommodated, reinforced and exacerbated existing injustices, such as entrenched customary law practices.

Keywords: Patriarchy, Customary Law, Transitional Justice, Gender Equality, Bush wives.

Table of Contents

Declaration....ii
Dedication.... iii
Acknowledgements....iv
Abstract....v
1. Chapter One: Preliminary Matters....1
1.1. Introduction....1
1.2. Methodology....3
1.3. Challenges of Conceptual Perspectives....9
1.3.1. Culture....10
1.3.2. Gender....11
1.3.3. Gender Equality....12
1.3.4. Patriarchy....12
Patriarchy and Patriarchal Attitudes in Rural Sierra Leone....14
1.3.5. Feminism....16
1.4. Definition of Concepts....21
1.5. The Hypothesis....22
1.6. Case Study -Sierra Leone....22
1.6.1. Historical Background....23
1.6.2. Colonialism....23
1.7. Why this Study?....25
1.7.1. Limitations of the Study....27
1.8. Concluding findings of the Thesis.....27
2. Chapter Two: 'Bush Wives' in Post-Conflict Sierra Leone....29
2.1. Introduction....29
2.2. Brief Overview of the Sierra Leonean Conflict....30
2.3. The Phenomenon of 'Bush wives' During the War....31
2.4. Essential Elements of Forced Marriage from the Decision on Forced Marriage....34
2.5. Harms Arising from Conflict-Related Forced Marriages....35
2.6. The Nature of Continuing Forced Marriages....37
2.6.1. Valid or Void Marriage?....38
2.6.2. Marriage or Friendship Arrangement?....39
2.7. Consent and Coercion in Continuing Forced Marriages....40
2.7.1. Meaning of Consent....41
2.7.2. Concept of Consent in a Marriage Contract....42
2.8. Consent in Customary Law Marriages in Sierra Leone....44
2.9. Choice Between Bad and Worse: Consent or Coercion?....48
2.9.1. Loss of Customary Benefits....50
2.9.2. Loss of Statutory Benefits....52
2.10. Conclusion....54

3. Chapter Three: The Legal Framework - Domestic Law (Including Customary Law) and International Law ... 56
3.1. Introduction ... 56
3.2. Bush Wives' Experiences of Private Harms: Sierra Leone's Response. ... 60
3.2.1. Protection from Sexual Violence ... 61
3.2.2. Domestic Violence Act, 2007. ... 63
3.2.3. Sexual Offences Act, 2012. ... 65
3.3. Failure to Hold Perpetrators of Sexual Violence to Account under Sierra Leone's Legal System ... 66
3.3.1. The 1999 Lomé Peace Agreement (Ratification) Act ... 68
3.3.1.1. Legitimacy of the 1999 Lomé Peace Agreement (Ratification) Act ... 69
3.3.1.2. Analysis of the Amnesty Provisions of the 1999 Lomé Peace Agreement (Ratification) Act ... 69
3.3.2. Amnesty and the Constitution ... 70
3.4. Right to Seek Redress in the Domestic Forum ... 73
3.5. Status of International Law in Sierra Leone Legal System ... 76
3.6. Amnesty Clause: Violation of the Principle of 'Non-derogability' ... 77
3.7. International Humanitarian Law's Prohibition of Amnesty ... 78
3.8. Why Do States Grant Amnesties? ... 79
3.9. International Human Rights Law's Prohibition of Amnesty. ... 81
3.9.1. Freedom from Discrimination ... 83
3.9.2. Discrimination Against Women and the Constitution ... 85
3.10. Discriminatory Practices in Customary Law ... 87
3.10.1. The Inferior Status of the Female Spouse ... 87
3.10.2. Control over Female Sexuality: Rape ... 88
3.10.3. Control over Female Sexuality: Duty to Bear Children ... 90
3.10.4. Bush Wives and the Disarmament, Demobilization and Reintegration Programme ... 92
3.10.5. Social Acceptance of Domestic Violence. ... 95
3.10.6. Domestic Duties as Conjugal Duties ... 97
3.11. Efforts to Combat Discrimination Against Women ... 98
3.12. International Law and States' Obligations to Protect Women's Human Rights in Conflict. 99
3.12.1. Sexual Violence as a War Crime ... 106
3.12.2. Sexual Violence as a Crime against Humanity ... 107
3.12.3. Sexual Violence as Torture ... 109
3.12.4. Sexual Violence as Discrimination: a Violation of International Human Rights Law ... 109
3.13. UN Security Council Resolutions ... 110
3.14. Conclusion ... 112
4. Chapter Four: Transitional Justice - The Case Law ... 115
4.1. Introduction ... 115
4.2. Establishment of the Special Court for Sierra Leone ... 116
4.2.1. Competence of the Special Court ... 116
4.3. Forced Marriage at the Special Court for Sierra Leone ... 117

4.3.1. *Prosecutor* v *Brima & Ors* ... 117
4.3.1.1. Facts of the Case ... 118
4.3.2. The Revolutionary United Front (RUF) Trial Judgment ... 121
4.4. Reactions to Recognition of Forced Marriage as a Crime Against Humanity ... 122
4.5. Patriarchal Definition of Forced Marriage ... 125
4.6. Failure to Enter Fresh Convictions ... 129
4.7. Slow Prosecution of Forced Marriages ... 130
4.8. Alternative Redress Avenues for the Bush wives. ... 131
4.8.1. Individual Complaints Mechanisms of Regional Human Rights Tribunals ... 131
4.8.1.1. The African Court on Human and Peoples' Rights (African Court) ... 132
4.8.1.2. The African Commission on Human and Peoples' Rights. ... 135
4.8.1.3. ECOWAS Community Court of Justice ... 136
4.9. Conclusion ... 137
5. Chapter Five: Bush wives and the Sierra Leone Truth and Reconciliation Commission ... 139
5.1. Introduction ... 139
5.2. The Sierra Leone Truth and Reconciliation Commission ... 143
5.3. Object of the Sierra Leone Truth and Reconciliation Commission ... 145
5.4. Validity of Local Traditions and Institutions incorporated by SL TRC ... 145
5.5. Historical Background of Customary Law ... 146
5.5.1. Criticisms of the Repugnancy Doctrine ... 148
5.5.2. Interpretation of the 'Living Law' ... 149
5.6. Feminists' View of Customary Law ... 151
5.7. Legal Context of Customary Law in Sierra Leone ... 152
5.8. Who Determines What Constitutes Customary Law? ... 154
5.9. Traditional Ceremonies and Women's Rights ... 156
5.10. Truth: the First Victim of War ... 159
5.10.1. Absence of Truth ... 161
5.10.2. Does Truth Matter to Women? ... 161
5.11. Effect of the Presence of Male Local Leaders ... 163
5.12. Criminal Trials vs. Customary Rights of Rapists ... 164
5.13. Absence of Women and Women's Voices at SL TRC Hearings ... 167
5.13.1. SL TRC Hearings and Natural Justice ... 172
5.13.2. Speaking for Crime Victims ... 173
5.14. Forgiving Perpetrators of Sexual Violence ... 175
5.15. Conclusion ... 176
6. Chapter Six: The (Missing) Women's Voices ... 178
6.1. Introduction ... 178
6.2. The '*Bad Bush Nor Dae For Troway Bad Pekin*' (There is no Evil Bush to Throw Away a Bad Child) ... 179
6.3. 'Home is not where we live. Home is where we belong.' ... 182

6.4. Conclusion 182

7. Chapter Seven: Conclusion 184

7.1. Introduction 184

7.2. Recommendations 186

List of Abbreviations 190

Table of Cases 194

Table of Legislation 197

Table of International Treaties and Conventions 198

Table of other Primary Legal Sources 199

Table of UN Documents 199

Bibliography of Secondary Sources 204

1. Chapter One: Preliminary Matters

1.1. Introduction

The most abusive aspect of a human rights injury may not be the act alone, but the range of social attitudes and the policy frameworks within which it is embedded.[1] This is illustrated by the sad circumstances of the Bush wives in post-conflict Sierra Leone. Warfare is often characterized by a state of anomie or lawlessness which results in the displacement of persons. The 2019-2002 Sierra Leonean war was depicted by widespread incidences of rape, forced marriage and other forms of sexual violence. These crimes were perpetuated as a tool of submission and control on women's bodies and lives who had been forced to flee their homes.

When wars end, displaced persons and refugee return home to live in peace. However, in Sierra Leone, the women who had been abducted and forced into 'marriage' by non-state fighters during the war were not allowed to live peacefully at home. Rather than being welcomed on their return home, the so-called Bush wives, were chased away. Rejected and ostracized by families and communities who did not want to interact with them, some Bush wives had no option but to return to their ex-abductor husbands. Even those who were not chased away from home were subjected to social and cultural stigmatization, and political exclusion. So, instead of remaining as pariahs within their homes and communities, they chose to return to their ex-abductor husbands; a decision that bred impunity and injustice. So, for the Bush wives, the cessation of the war in Sierra Leone did not bring the expected peace as:

> *Peace includes not only the absence of war, violence, and hostilities at the national and international levels but also the enjoyment of economic and social justice, equality and the entire range of human rights and fundamental freedoms within the society.*[2]

[1] Vasuki Nesiah, *Truth Commissions and Gender: Principles, Policies and Procedures* (International Center for Transitional Justice 2006) 22.

[2] A broad definition given during the 1985 Third World Conference on Women reflects the feminist view that peace: '…includes not only the absence of war, violence and hostilities at the national and international levels but also the enjoyment of economic and social justice, equality and the entire range of human rights and fundamental freedoms within the society;' see UN, Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 1985 (UN 1985) 8. Furthermore, the 1995 Fourth World Conference on Women recognised that 'Peace is inextricably linked with equality between women and men and development,' see UN, 'Report of the Fourth World Conference on Women Beijing, 4-15 September 1995' (UN 1996) 56.

So, after the war, peace was elusive for the Bush wives, because in addition to being chased away from home, they were excluded from the post-conflict transitional processes of reconciliation and recovery. Furthermore, both international and domestic legal frameworks failed to provide them effective legal redress or access to justice.

To understand why contrary to expectation, the Bush wives were chased away from home, the following research question is formulated: To what extent did women's experiences of human rights in rural Sierra Leone before, during and after the war affect the decisions of the Bush wives to remain or return to their ex-abductor husbands? To answer the research question effectively, it is divided into the following sub-questions:

- Who are the Bush wives of Sierra Leone?
- Were the experiences of the Bush wives during and after the war, in respect of their violated human rights, different from the lived experiences of rural women of Sierra Leone?
- Did the Bush wives consent to the new unions with their ex-abductor husbands?
- Did the international legal framework effectively protect the Bush wives against the violations?
- Did the domestic legal framework effectively protect the Bush wives against the violations?

Therefore, my hypothesis is that lack of respect for women's human rights in rural Sierra Leone is key to the harms women experienced before, during and after the war.

When I say 'to what extent…the Bush wives' decisions are affected…' I will measure the magnitude/severity of their experiences with reference to sources such as:

- Primary, secondary and tertiary written texts of domestic (including customary law) and international law.
- evidence of unwritten law.
- Judicial precedent available through case reports, including international and domestic cases.
- Binding and persuasive jurisprudence/doctrine used in courts; and

- Voices of the Bush wives.

The answers to the research question will help reveal why the Bush wives were chased away from their homes after the war, and particularly, whether the fact of their being women was a contributory factor. My choice of research topic is because, first as an African woman I am interested in the plight of my oppressed African sisters. Secondly, in the belief that ‘none of this had to happen’ the purpose of my thesis is to raise awareness about the on-going harms that the survivors of forced marriage continue to suffer due to a war that ended over 20 years ago.

By positioning Bush wives as a point of enquiry, this thesis aims to create a space within which the rights and experiences of this class of victims of conflict-related sexual violence can be theorized. The thesis investigates the scope of the injury and the range of factors that impact the crime of forced marriage, and its ‘unlawful continuation’ after the war. Although both urban and rural women experienced sexual violence during the Sierra Leonean conflict, this research does not deal with the post-conflict experiences of the urban victims. The post-conflict experiences of both groups of women are similar in many respects, but in practice, the choices available to them are largely dependent on their personal law.

The personal law of the individuals in Sierra Leone depends on where they live. While rural women are governed by customary law, urban women’s personal law is general law. Although the nature and role of customary law is constantly changing, with some rural dwellers opting to be governed by general law, customary law continues to play a vital role in regulating the lives of rural women and children, especially in marriage and inheritance. In rural Sierra Leone, the typical patriarchal perception of women encourages discrimination against women in general, and Bush wives face discrimination due to pre-existing patriarchal attitudes.

1.2. Methodology

The thesis adopts a critical feminist and socio-legal perspectives using doctrinal research techniques. Adoption of the feminist perspective is in line with Mantt’s view that ‘…feminist legal scholarship…offers a range of insights into how laws can operate to exclude and marginalize women, facilitate and contribute to their experiences of wider inequalities, and omit their subjectivities whilst presenting male subjectivities as objective, legitimate, or simply as common sense.’[3] Similarly, it approves Hussain and Zada’s view that, feminist research ‘seeks to

[3] Jess Mantt, ‘Working Politically: Combining Socio-Legal Tools to Study Experiences of Law’ (2020) 21 German J. L. 1464, 1466.

search and explore the social dynamics and relationships in patriarchal society from women's perspective.'[4]

The focus on feminist theories is because other theories, especially Western theories of international law, are of male origin and are perceived to be 'concerned with the silencing of women' and have failed to accommodate women's experiences.[5] Western theories of law have made a distinction between law and society; viewing law as an autonomous entity, and as a legal system different from a political or economic systems. Feminists' theories' view law not as an abstract entity that can be divorced from society, as it is intricately linked with society's political, economic, historical, and cultural systems.[6] So, feminists 'ask the woman question': how legal rules or practices affect women as a class or fail to account for women's perspectives.[7]

In answering the question, they expose hidden assumptions and biases in seemingly neutral legal rules, as well as the real-world impact of those rules on women.[8] Since the aim of this thesis is to seek answers to the problem of forced marriage in situations of conflict, a crime that affects mostly women, the feminist perspective will help provide appropriate answers.[9] The examination of feminist perspectives on forced marriage will focus on sexual violence in general, as forced marriage, a form of sexual violence, cannot be treated in isolation.

Feminists have argued that law frequently fails to acknowledge the important ways in which the conditions of women's lives differ, 'or recognize that different treatment may sometimes be required in order to achieve substantive equality.'[10] So, although, the effects of armed conflict on civilians are often devastating, leaving survivors suffering both short and long-term consequences; these consequences are not experienced uniformly. The gendered nature of conflict is

[4] Basharat Hussain and Amir Zada Asad, 'A Critique on Feminist Research Methodology' (2012) 5 (4) JL& Pol 202, 206.

[5] Christine Chinkin and Hilary Charlesworth, 'Building Women into Peace: the International Legal Framework' (2006) 27(5) Third World Quarterly 937, 942; Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: A Feminist Analysis (Manchester UP 2000) 38.

[6] Hilary Charlesworth *et. al.*, 'Feminist Approaches to International Law' (1991) 85(4) AJIL 613.

[7] See Simone de Beauvoir, *The Second Sex* (Jonathan Cape, London 1953) 26; see also Aaron Xavier Fellmeth, 'Feminism and International Law: Theory, Methodology, and Substantive Reform'(2000) 22 Hum. Rts. Q. 658, 665.

[8] Katharine T. Bartlett, 'Feminist Legal Methods' (1990) 103(4) Harv L. Rev. 829, 842-834; see also Fellmeth, ibid.

[9] There are as many different feminist theories as women are different. As women differ in culture, body, language and personality, so does feminism. The unifying ground in feminism is the common interest in combatting women's subordination. This thesis will therefore de-emphasize debates among feminists, and instead focus on the contributions of the different feminisms to the emancipation of the woman.

[10] Alison Diduck and Katherine O'Donovan, 'Feminism and Families: Plus ca change?' in Alison Diduck and Katherine O'Donovan (eds.), *Feminist Perspectives on Family Law* (Routledge-Cavendish 2006) 1, 9; see also Joanne Conaghan, *Law and Gender* (Clarendon Law Series) (OUP 2013) 103.

well documented, with women accounting for the vast majority of those affected adversely primarily because of their subordinate status in society. Globally, women are exploited and discriminated against to greater degrees than their men, especially during times of conflict and are almost categorically excluded from the negotiation and other processes that influence post-conflict outcomes.

The aim of this thesis is therefore a critical analysis of the phenomenon of Bush wives and how the steps taken in post-war Sierra Leone failed to critically address their interests. The thesis acknowledges that the government of Sierra Leone made several attempts to promote women's rights. Such attempts include the adoption and domesticating of international instruments, and the enactment of domestic laws that seek to eradicate gender injustice. However, law as an instrument of social change has its limitations. Attempts to eradicate gender injustice in any society, however, can only succeed with the identification of deep-rooted structures of domination that serve to perpetuate ideologies with patriarchal foundations. The research attempts to show how despite Sierra Leone's ratification of relevant human rights instruments, women's concerns were not adequately addressed by the Sierra Leonean government and the international community. More attention was paid to public harms than private harms, and cultural norms which promote gender inequality and injustice than to women's rights.

The lived experiences of women during the transition period were therefore regulated by anti-women cultural norms, that aggravated entrenched patriarchal power structures, and created new ones. The typical patriarchal perception of women encourages discrimination against women in general, and Bush wives face further discrimination due to existing patriarchal attitudes. They had to leave their homes, families, and communities behind, along with opportunities, and support systems not readily available elsewhere. Incidentally, leaving their familiar backgrounds, they were forced to make choices which challenged the typical perception of women dictated by entrenched patriarchal power structures.

To support these arguments, this thesis is structured in six parts. Chapter One, the introductory chapter gives a brief history and development of Sierra Leone, the conflict, the socio-cultural background of Sierra Leone, and women's issues from a feminist perspective. This will provide further insight into the circumstances that underpin and affect this study.

Chapter two examines the phenomenon of Bush wives, a product of the Sierra Leonean war. The first section of this chapter begins with the experiences of the 'Bush wives' of Sierra Leone. This provides a contextual background to the subsequent analysis of the 2008 case of *Prosecutor v Brima et. al.* in chapter 4.

This landmark decision of the Special Court for Sierra Leone (hereinafter SCSL) recognized forced marriage as a crime against humanity, a first in international criminal law history. A brief overview of their experiences during the conflict aids our understanding of the harms the Bush wives suffered in their original forced marriages and afterwards. The main argument of the chapter is that the harms the Bush wives suffered, during their original forced marriage and the role of consent and coercion in their return to their abductors are like the lived experiences of the rural women of Sierra Leone.

To prove this argument, despite the widespread societal discrimination women face in other areas such as property and inheritance,[11] my focus is limited to marriage. This is because the 'marriages' forced on them during the war resulted in their being chased away from home. So, the status of the marriages the Bush wives contracted after the war is vital to their being accepted in society. Comparing the status, rights and duties arising out of traditional or customary law marriages with the war time marriages, and to a lesser degree, post-conflict marriages will help uncover similarities as well as differences. However, the major similarities will be critically analysed to show that, although the harms they suffer occur under different circumstances, the parallels are so striking and can be traceable to a common source, societal patriarchal norms and attitude.

In chapter three, the thesis analyzes the relevant domestic (including customary law) and international regulatory frameworks that impact the conflict and post-conflict lived experiences of Bush wives. The analysis is based on the principle that visibility and accountability for gender crimes through international and domestic justice mechanisms can advance the cause of justice for women.[12] For it is only when sexual violence is perceived as a political event, when it is made public and analysed, can its causes and contexts be probed and strategies to overcome it be considered.

The limitations of law in addressing women's experiences during conflicts and post-conflict has for long been the subject of dominant discourses by feminists. The lack of recognition of harms peculiar to women, lack of sanctions in the form of amnesties for perpetrators of sexual violence, and inadequate remedies for victims are some of the failed responses of both domestic and international law to their human rights violations.

---

[11] See US Department of State, 'Sierra Leone 2018 Human Rights Report: Executive Summary, Country Reports on Human Rights Practices for 2018', 17 < https://www.state.gov/wp-content/uploads/2019/03/Sierra-Leone-2018.pdf> accessed 16 February 2020.

[12] See Binaifer Nowrojee, 'Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims' (2005) 18 Harv Rts. J. 85, 88.

Furthermore, it will investigate the interactions of the different regulatory frameworks and responses to the Bush wives and expose how both legal frameworks are actively and passively implicated in the Bush wives' experiences of inequality and disadvantage. I will argue that domestic and international regulatory frameworks did not ameliorate but contributed to the harms women experienced during and after the war; that the harms they experience flows directly not from the absence of laws protecting women against sexual violence, but in the ineffective enforcement of extant laws.

Chapter four builds upon chapter three's argument, by scrutinizing the impact of the historic decisions of the SCSL on forced marriage as a crime against humanity on the Bush wives. Although the SCSL made significant contributions to international criminal justice by being the first in history to adjudicate on crimes relating to forced marriage, my argument is that it appeared not have advanced justice for the Bush wives. Its impact on the domestic legal scene was limited since the judgement did not significantly ameliorate the harms suffered by these women during and after the war. The judgements did little or nothing to reduce the lack of respect for women's human rights in rural Sierra Leone, which is key to the harms women experienced before, during and after the war.

Given the normative imperative of transitional justice to 'ensure accountability, serve justice and achieve reconciliation' chapter five examines the effectiveness of the **Sierra Leone Truth and Reconciliation Commission** (hereinafter **SL TRC**) in promoting gender justice. It seeks an understanding of what justice means for women, and especially victims of forced marriage in post-conflict situations in Sierra Leone, with a view to an improvement of transitional justice processes. These processes are important not only from a legal point of view but have important repercussions on victim's (mental) health and coping after periods of unrest, injustice, and violence. My main argument in this chapter is that despite Sierra Leone's commitment to gender equality, by accommodating and reinforcing rather than challenging and changing traditional norms and attitudes, the SL TRC exacerbated existing injustices, and created new ones for the Bush wives.

Chapter five comprises the Bush wives' narratives, whose voices matter but have been heard in very few unofficial settings. The chapter includes testimonies of why they returned to their ex-abductor husbands; obtained from informal sources: an unpublished paper and an online Zoom meeting organized by Mr. George Mansaray, the President of the Sierra Leona Social Workers Association on 8 July 2021. Despite this limitation, when compared to the Bush wives' testimonies given during the formal **SL TRC** and the **SCSL** proceedings, the information

obtained contributes an informed and comprehensive insight into the conflict and post-conflict experiences of Bush wives.

In critiquing transitional justice initiatives in Sierra Leone, this thesis does not commit itself to any one theory of justice but subscribes to a general understanding of justice informed by a commitment to fairness. While recognizing that the meaning of 'justice' is the subject of much debate,[13] for the purposes of this thesis, justice is taken to mean the equal interaction of all adult members of society with each other and equal participation in the political processes that shape their lives.[14] On the other hand, injustice means 'institutionalized obstacles that prevent some people from participating on a par with others, as full partners in social interaction.'[15] In adopting these definitions, this thesis does not disregard the right of peoples to choose their own forms and routes of justice but notes the need for a working definition of justice that allows sufficient space for interpretation by individuals and groups.

This thesis is not a doctrinal international law research but uses international law instruments to highlight the contextual arguments I am making. In this respect, I use international instruments, case law and secondary literature. Although, I am using universal legal instruments, I emphasize the international bill of rights for women, the **Convention on the Elimination of All Forms of Discrimination Against Women**[16] and **the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**[17] to which Sierra Leone is party. This is because both instruments specifically address discrimination and the socio-cultural patterns that sustain stereotyped roles for men and women.[18]

The thesis gathered and analyzed women's experiences from existing literature and the voices of survivors of conflict-related sexual violence, including forced marriage. Their 'voices' were 'harvested' during a meeting on 'Survivors of Sexual Violence: Life after the War'[19] and the '2014 Global Summit to End

---

[13] Komal Parnami, 'Concept of Justice: Difficulties in Defining Justice' (2019) 2(5) International Journal of Law, Management and Humanities 1; Philosophers such as Immanuel Kant, John Stuart Mill, John Rawls, Robert Nozick theories of justice have been extensively discussed in academic literature.

[14] Nancy Fraser, 'Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation' (Tanner Lectures on Human Values, Stanford University, April 30–May 2, 1996) 30-31; Nancy Fraser and Marek Hrubec, 'Towards Global Justice: An Interview with Nancy Fraser' (2004) 40(6) Czech Sociological Review 879, 882.

[15] Nancy Fraser's definition of 'justice' in her exploration of 'social justice' in Nancy Fraser, 'Reframing Justice in a Globalizing World' (2005) 36 New Left Review 69, 73.

[16] Adopted 18 December 1979, entered into force 3 September 1981, 1249 UNTS 13, [Hereinafter **CEDAW**]

[17] Adopted 11 July 2003, entered into force 25 November 2005 [Hereinafter Maputo Protocol].

[18] See **CEDAW**, articles 5(a) and 2 (f); see Maputo Protocol, articles 2 (2), 4(2)(d) and 12 (1)(b).

[19] The meeting was conducted online, by Zoom, on 8 July 2021, by Mr. George Mansaray, the President of the Sierra Leona Association of Social Workers; see p. 179 for details.

Sexual Violence in Conflict.'[20] These events were unique opportunities for me to hear directly the stories of survivors of sexual violence.[21] Incorporating their voices in support of my arguments, serves to emphasize and honour the survivors' own words 'as generative of meaning and knowledge'.[22]

By prioritizing the 'voice of the researched'[23] the thesis attempts to enable the Bush wives make explicit their own ways of seeing the nature of their post-war experiences. In addition, letting the researched speak for themselves has been acknowledged as an interpretive qualitative approach that reduces researcher bias and subjectivity[24] and "offers a sense of transparency to the reader."[25] The research uses the 'individual voice,'[26] the 'collective voice'[27] as well as the 'researcher-interpreted collective voice.'[28]

The thesis also uses African proverbs to illustrate institutionalized subjugation, and oppression of African women due to the patriarchal foundation of customary law that governs their lives. The proverbs depict gender bias and discrimination, attitudes that are prevalent in African societies. The semantic traits of lexical items used to describe women, such as: child, twisted, never thinks, invalid, talk, clothes, does not know, etc., all carry the nuance of negativity, a common patriarchal feature.

1.3. Challenges of Conceptual Perspectives

The thesis examines gender relations within the setting of customary laws of rural Sierra Leone. Culture in the form of customary laws, patriarchy and gender provides the analytical frame of this thesis. This thesis will therefore briefly examine the conceptual and theoretical perspectives on these inter-related concepts that are relevant for the research.

---

[20] Described as '…the largest gathering ever brought together on the subject', the Summit agreed on practical steps to tackle impunity for the use of rape as a weapon of war, and how to begin to change global attitudes to these crimes, see Global Summit to End Sexual Violence in Conflict, London, 2014 <https://www.govuk/government/topical-events/sexual-violence-in-conflict> accessed 14 July 2021.

[21] I also had the opportunity to ask survivors of forced marriage questions during the Zoom seminar referred to above, n 19.

[22] Rasheeta Chandler *et. al*., 'Listening to Voices and Visualizing Data in Qualitative Research: Hypermodal Dissemination Possibilities' (2015) 5 SAGE Open 16.

[23] John A. Bowden and Pamela J. Green, 'The Voice of the Researched in Qualitative Research' in J. Higgs et. al. (eds.) *Researching Practice: A Discourse on Qualitative Methodologies* (Sense Pub 2010) 123.

[24] See generally, Beloo Mehra, 'Bias in Qualitative Research: Voices from an Online Classroom' (2002) 7 The Qualitative Report 1.

[25] Chandler *et. al*., n 22, 16.

[26] One meaning is the voice of the individual person from whom data are gathered according to Bowden and Green, n 23.

[27] Ibid, a combined voice developed and agreed upon by a group of people discussing a particular issue.

[28] Ibid, individual voices made explicit with someone interpreting from them an integrated collective account.

1.3.1. Culture

Globally, several cultural practices that are sanctioned by dominant ideologies and perpetuated by social and state structures, invariably infringe women's rights. In rural Sierra Leone culture, patriarchal practices shape and perpetuate gender inequality and rob women of any form of control over their lives. This is in line with Radical feminists' argument that culture imprisons women leading to their subordination because of the patriarchal nature of society.[29]

The term 'culture' is broadly interpreted to mean the 'customs, institutions and achievements of a particular nation, people or group.'[30] Culture forms a 'complex whole which includes a spiritual and physical association with one's ancestral land, knowledge, belief, art, law, morals, customs and any other capabilities and habits acquired by humankind as a member of society'.[31] However, narrow interpretations of 'culture' erroneously assume it to be interchangeable with 'custom' or 'tradition',[32] as per the following Lightfoot-Klein's assertion:

> *Custom in Africa is stronger than domination, stronger than the law, stronger even than religion. Over the years, customary practices have been incorporated into religion, and ultimately have come to be believed by their practitioners to be demanded by their adopted gods, whoever they may be.*[33]

Today, almost two decades after Lightfoot-Klein's statement, culture continues to impact negatively on women's rights despite global and local efforts made to minimize its impact.

This thesis, however, focuses on only one aspect of culture, namely, customary law. This is because customary law, which is the personal law of Bush wives, has an enormous negative impact on their lives, especially in marriage and inheritance. Marriage and inheritance are two areas in which patriarchal practices shape and perpetuate gender inequality, leading to the subordination of the rural women of Sierra Leone. Despite the prohibition of harmful cultural and traditional practices by national and international instruments, such practices are often justified on the grounds of 'tolerance' and 'respect' towards culture.

---

[29] Maureen Kambarami, *Femininity, Sexuality and Culture: Patriarchy and Female Subordination in Zimbabwe* (ARSRC 2006) 1, 2.
[30] *South African Concise Oxford Dictionary* (OUP 2002).
[31] ACHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, (Comm. No. 276/2003) (11–25 November 2005) para. 241.
[32] Sylvia Tamale, 'The Right to Culture and the Culture of Rights: a Critical Perspective on Women's Sexual Rights in Africa' (2008) 16 Fem. Leg. Stud. 47.
[33] Quoted in Lightfoot-Klein (1989) 47 (as cited in O Okome, 'What Women, Whose Development' in O Oyewumi, *African Women and Feminism: Reflecting on the Politics of Sisterhood*. (Africa World Press 2003) 71.

1.3.2. Gender

Gender is a widely used term, but it is often misunderstood. It is often erroneously conflated with sex or used to refer only to women. It was defined for the first time in an international criminal law instrument in 1998.[34] The Rome Statute of the International Criminal Court[35] definition of 'gender' as referring to the two sexes, male and female, within the context of society has been criticized.[36] In the social sciences, what is now called gender was originally conceptualized as sex roles.[37] However the definition of gender has shifted from the attributes of individuals to 'a major building block in the social order and an integral element in every aspect of social life.'[38]

To Momsen, gender identities are flexible and not simple binary constructions as they are socially construed.[39] The uncertainties, discrepancies, and contradictions in customary law itself are often exposed when the concept of gender is critically analysed. Gender bias in most societies is deep rooted and according to Goertz and Mazur, the 'gendering' of existing central concepts is vital in theoretical and methodological concerns in gender literature.[40] Gendering involves exposing hidden biases and assumptions in standard conceptualizations. The thesis aims to do this by discussing the impact of customary laws on the lived experiences of the Bush wives of Sierra Leone.

Feminists often view women as a socially constituted, homogenous group, based on shared oppression. However, gender relations are best understood if interpreted within specific societies based on historical and political practice and not solely on gender terms. This view is aptly expressed by Jackson in her writing on the concepts of gender and sexuality. She examines how gender is a socially constructed product of patriarchal hierarchies.[41] This analysis implies that gender

---

[34] 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.

[35] Article 7 (3), (adopted 17 July 1998, entered into force 1 July 2002) ISBN No. 92-9227-227-6 / A/CONF.183/9 (UNGA) [Hereinafter Rome Statute].

[36] For details see Oosterveld, n 34, 55-57; Rhonda Copelon, 'Gender Crimes as War Crimes: Integrating Crimes Against Women into International Criminal Law' (2000) 46 Mcgill L.J. 217, 236; Hilary Charlesworth, 'Feminist Methods in International Law' (1999) 93 Am. J. Int'l L. 379, 394.

[37] Mirra Komarovsky, 'Cultural Contradictions and Sex Roles' (1946) 52 Am J Soc 184; Mirra Komarovsky, 'The Concept of Social Role Revisited' [1992] 6(2) Gender and Society 301 H. Z. Lopata and B. Thorne, 'On the Term "Sex Roles."' (1978) 3 Signs: Journal of Women in Culture and Society 718.

[38] Ivy Kennelly, et. al., 'What Is Gender?' (2001) 66 Am.Soc.Rev. 598, 600; see also Myra Marx Ferree et. al., 'Introduction' in Myra Marx Ferree, Judith Lorber and Beth B. Hess (eds.), *Revisioning Gender* (Sage Pub. 1999) xv.

[39] Janet Momsen, *Gender and Development. (*Routledge 2004) 11.

[40] Gary Goertz and Amy G. Mazur (eds) *Politics, Gender, and Concepts: Theory and Methodology* (CUP 2008) 6-9.

[41] S. Jackson, 'Theorizing Gender and Sexuality' in S. Jackson and J. Jones (eds), *Contemporary Feminist Theories (*Edinburgh UP 1999) 131, 135; Stevi Jackson, 'Gender and Heterosexuality: a Materialist Feminist Analysis.' 2003 HeteroSexual Politics 11.

is the result of gendered power differences. Similarly, Turcotte argues that the notion of 'gender,' seems to mask, or camouflage, the relationships of oppression.[42] Since gender is commonly associated with one's social and economic position, then one's gender as a 'woman' leads to social subordination and gendered customary law promotes this understanding.

1.3.3. Gender Equality

Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous, and sustainable world.[43] Gender Equality does not mean that both man and woman should have the same roles. Rather, it means that their rights, obligations, and positions should not be determined solely, based on their sex and gender.[44] It also connotes that the status, needs and opinions of both man and woman should be evaluated and estimated, equally and favourably.[45] The importance attached to the concept has led to its recognition as Goal 5 of the Sustainable Development Goals: to 'Achieve gender equality and empower all women and girls.' Gender equality matters because women and girls represent half of the world's population and therefore half of its potential.

However, there is no country where gender inequality is not present, leading to stagnation of social progress. According to the UN, some progress has been made over the last decades, with more girls in schools, fewer cases of girls being forced into early marriages, more women are in parliament and positions of leadership, and laws are being enacted to advance gender equality. However, many challenges remain including discriminatory laws and social norms which are pervasive,[46] women are still underrepresented at all levels of political leadership, and '1 in 5 women and girls between the ages of 15 and 49 report experiencing physical or sexual violence by an intimate partner within a 12-month period.'[47]

1.3.4. Patriarchy

In recent times, there has been an increase in the usage of 'patriarchy' and 'patriarchal', by several United Nations organs, while discussing states obligations in relation to women's human rights.[48] Similarly, 'patriarchy' is

---

[42] Louise Turcotte, 'Foreword' in Monique Wittig, *The Straight Mind and Other Essays (*Beacon Press 1992) xi, 15.
[43] UN, Sustainable Development Goals, 'Goal 5: Achieve Gender Equality and Empower all Women and Girls'< https://www.un.org/sustainabledevelopment/gender-equality/> accessed 19 September 2020.
[44] UNICEF, 'Gender Equality: Glossary of Terms and Concepts' (UNICEF 2017) https://www.unicef.org/rosa/media/1761/file/Genderglossarytermsandconcepts.pdf > accessed 12 November 2019.
[45] Ibid.
[46] The subject matter of this thesis.
[47] UN, n 43.
[48] UN human rights treaty monitoring bodies and special procedures; for e.g. Radhika Coomaraswamy, 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, in accordance with

currently a call to action and has become an essential analytical tool for feminist understandings of women's experience in the world.[49] Although no international legal instrument, including **CEDAW** and the **Maputo Protocol** mention these words, since 2007, these terms have been used specifically by treaty bodies[50] with reference to states' failure to respect and safeguard women's human rights.

The CEDAW Committee for instance, uses the concept of patriarchy when interpreting state parties' obligations under the Convention, and uses it almost exclusively in connection with article 5(a). One of the most important provisions in the Convention, article 5(a) deals with the elimination of harmful gender stereotypes in general. It provides that states parties shall take all appropriate measures '[t]o modify the social and cultural patterns of conduct of men and women.' In the context of Sierra Leone, the significance of article 5(a) is that several cultural practices pose a major obstacle to women's rights, and particularly the rights of the Bush wives. In addition, the fact that state parties are required to dismantle social, religious, and cultural structures which support the subordination of women by men, it seems to suggest that CEDAW requires states to eliminate patriarchal structures and attitudes, from the government to the private sphere.

Similarly, based on the provisions of articles 1(g), 2(2) and 5 of the **Maputo Protocol**, as well as its definition of 'harmful practices', it could also be suggested that states parties are required to eliminate patriarchal structures and attitudes in all spheres of life. Article 1(g) defines 'harmful practices' as '…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'.[51] To dismantle social, religious, and cultural structures which support the subordination of women by men requires modification of the social and cultural patterns of conduct and attitude of women and men. These

---

Commission on Human Rights resolution 2000/45 (E/CN.4/2001/73)', 2001 does not mention patriarchy, but there has been an increased usage since then; see Cassandra Mudgway, 'Can International Human Rights Law Smash the Patriarchy? A Review of 'Patriarchy' (2021) 29 Fem.L.S 67, 69.

[49] Mudgway, ibid.

[50] See the CEDAW Committee, '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 Report of State Parties: Sierra Leone' (14 December 2006) CEDAW/C/SLE/5 and the CEDAW Committee 'Concluding Observations on the 6th Periodic Report of Sierra Leone' (10 March 2014) UN Doc CEDAW/C/SLE/CO/6. [Hereinafter CEDAW/C/SLE/CO/6, 2014]; the UN CRC, *Concluding Observations on the Combined Third to Fifth Periodic Reports of Sierra Leone* (1 November 2016) UN Doc CRC/C/SLE/CO/3-5 [Hereinafter CRC/C/SLE/CO/3-5, 2016]; UN CRC, 'Consideration of Reports Submitted by States Parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: Concluding Observations on Sierra Leone (14 October 2010) UN Doc CRC/C/OPAC/SLE/CO/1; and UN CRC, Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations: Sierra Leone (20 June 2008) UN Doc CRC/C/SLE/CO/2 [Hereinafter CRC/C/SLE/CO/2, 2008].

[51] Maputo Protocol, article 1(g).

negative actions and, or omissions are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men[52] Furthermore, the **Maputo Protocol** recognises such harmful practices as those that negatively affect the human rights of women, and which are contrary to recognised international standards.[53]

Patriarchy and Patriarchal Attitudes in Rural Sierra Leone

In accordance with current international human rights practice as well as feminist scholarship, the thesis will adopt these words with reference to the lived experiences of the rural women of Sierra Leone. A summary of the usage of these terms by treaty bodies and feminists' scholars will help support my argument as lack of respect for women's human rights in rural Sierra Leone can best be discussed by following well established practices.

In a 2007 report on Sierra Leone, the CEDAW Committee noted:

> *... the persistence of adverse cultural norms, practices, and traditions and of patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life. The Committee is concerned that such norms, customs, and practices justify and perpetuate discrimination against women, including violence against women...*[54]

Seven years later, commenting on stereotypes and harmful practices**,** the Committee noted with concern:

> *The lack of information on steps taken to address adverse traditional stereotypes regarding the roles and responsibilities of women and men in society and, in particular, in the family, and the persistence of patriarchal norms that reinforce male dominance, especially among rural communities…*[55]

Similarly, the 2014 Human Rights Committee and the 2016 Human Rights Council Working Group on the Universal Periodic Review reports on Sierra Leone identify harmful practices that are 'patriarchal'.[56] The term, however, is not mentioned in the reports of the Committee on the Rights of the Child and the

---

[52] As in article 2(2), ibid.
[53] Ibid, article 5.
[54] UN CEDAW, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Sierra Leone (11 June 2007) UN Doc CEDAW/C/SLE/CO/5, para. 20 [Hereinafter CEDAW/C/SLE/CO/5, 2007].
[55] See CEDAW/C/SLE/CO/6, 2014, n 50, para. 18(a).
[56] UN Human Rights Committee, 'Concluding Observations on the initial report of Sierra Leone' (17 April 2014) UN Doc CCPR/C/SLE/CO/1, para. 10 [Hereinafter CCPR/C/SLE/CO/1, 2014, the Committee expresses concern regarding 'the persistence of deep-rooted and negative patriarchal stereotypes regarding roles of women and men in the family and in society at large' and urges Sierra Leone to enhance its efforts at its elimination; see also UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Sierra Leone* (14 April 2016) UN Doc A/HRC/32/16, para. 35.

African Union on Sierra Leone. The absence of the usage of the terms by some treaty bodies and special procedures, especially in relation to Sierra Leone, I argue, does not detract from the importance of these terms in the literature of women's human rights in rural Sierra Leone. The usage of these terms almost always refers to norms and practices that reinforce the subordinate position of women in society and infringes their human rights.

I will, however, take cognisance of the different approaches to the interpretation of 'patriarchy' by the UN organs. While the CEDAW Committee and other treaty bodies[57] view patriarchy as being synonymous with certain harmful practices, such as forced marriage and FGM, special procedures utilise 'patriarchy' as a system of power, permeating every facet of society. Despite the concerns about the consequences of the different interpretations ascribed to the concept of patriarchy by the UN bodies,[58] it is widely known that there is no one unified understanding of patriarchy.[59]

Despite the almost universal feminist chant of 'smash the patriarchy,' its interpretation differs. As an academic term, "patriarchy" has been challenged, redefined, re-examined, rejected and rediscovered.[60] Consequently, patriarchy has become an elastic concept and today, like the UN bodies, there are two general interpretations within feminist scholarship.[61] First, patriarchy is regarded as the overt subordination of women by men, an oppression looked on as a feature of society and culturally constructed.[62] This subordination is exemplified by the ideology of the 'supremacy of the fathers', represented by the family structure, with men as the head of the family unit and male relatives controlling women. Male supremacy is based on the 'natural' difference between the genders, ordained by God or biology and the cultural construction of gender and gender roles within the family and within society in general.[63] These strict gender roles and family structures endure because they have been codified in legal frameworks, reproduced by social and cultural practice, and reinforced by male violence against women.[64]

---

[57] Including the UN Human Rights Committee and the UN Human Rights Council.

[58] Mudgway believes this conflicting approach may lead, *inter alia,* to reduced protection of women's human rights', see Mudgway, n 48, 69.

[59] Ibid.

[60] Cassandra Mudgway, 'Smashing the patriarchy: why international law should be doing more'< https://blogs.lse.ac.uk/wps/2019/10/07/smashing-the-patriarchy/> accessed 2 November, 2020.

[61] Ibid.

[62] Kate Millett, *Sexual Politics* (Rupert Hart-Davis 1970) 22, 27, 33, 46, 103ff; Mary Daly, *Gyn/Ecology: A Metaethics of Radical Feminism (*Beacon Press 1978) 1ff; Sylvia Walby, *Theorising Patriarchy* (Blackwell Pub. 1990) 20.

[63] Max Weber, *From Max Weber: Essays in Sociology* (OUP 1946) 206; Millett, ibid 33.

[64] Radical feminists cite the absence of 'legal controls on pornography and sexual harassment, excessive restrictions on abortion, and inadequate responses to violence against women as examples of the ways laws

Secondly, patriarchy is seen as a system of power which is hierarchical and autonomous, permeating every facet of society.[65] This uneven power-relationship in which the male sex obtain supremacy over women, results in their subordination to men throughout society. Men and male interests are dominant in all institutions, including the family, religious and social groups, workplaces, the judiciary and the government.[66] This male hierarchical structure is 'maintained through culturally constructed gender roles for men and women that are reproduced and reinforced through social practices and rules, the education system, the legal system and the media.'[67] This interpretation is illustrated in bell hooks definition of patriarchy as:

> *... a political-social system that insists that males are inherently dominating, superior to everything and everyone deemed weak, especially females, and endowed with the right to dominate and rule over the weak and to maintain that dominance through various forms of psychological terrorism and violence.*[68]

Both interpretations of 'patriarchy' are applicable in Sierra Leone and will be applied in this thesis. However, while 'patriarchal attitudes' are commonly conflated with 'harmful traditional practices,'[69] patriarchy is not a unique Third World concept, as both Western and Third World cultures are deeply influenced by the idea of the supremacy of the fathers. This argument is supported by Boonzaaier and Sharp's definition of patriarchy as 'a system of domination of man over women, which transcends different economic systems, eras, regions and class.'[70]

1.3.5. Feminism

Feminist theory seeks a gender sensitive approach and perspective in every structure of society, including in transitional justice processes. The theory challenges the existing distribution of power and its effect on the subordination of women. While other theories, especially Western theories of international law

---

contribute to the oppression of women', see Nancy Levit and Robert R. M. Verchick, *Feminist Legal Theory: A Primer* (2nd ed., New York UP 2006) 20; see also Cecilia Menjívar and Shannon Drysdale Walsh, 'Subverting Justice: Socio-legal Determinants of Impunity for Violence against Women in Guatemala' (2016) 5(3) Laws 31, 39; Catharine MacKinnon, *Toward a Feminist Theory of the State* (Harvard UP 1989).

[65] Robert Bahlieda, 'Chapter 1: The Legacy of Patriarchy.' Counterpoints 2015 (488)15-19; Carole Pateman, *The Sexual Contract* (Sandford UP. 1988) 1; Pam Morris, *Literature and Feminism* (Wiley 1993) 4.

[66] Quoting OCDE, Working Party on the Role of Woman in the Economy, The Integration of Women into the Economy, 1985, 176, as cited in Gerda Lerner, *The Creation of Patriarchy* (OUP 1989) 3; Morris, ibid.

[67] Walby, n 62, 91-94; Sylvia Walby, 'Theorising Patriarchy' (1989) 23(2) Sociology 213, 214.

[68] Bell Hooks, *The Will to Change: Men, Masculinity, and Love* (Atria Books 2003) 18.

[69] By analyzing CEDAW Committee States Concluding observations, Mudgway showed that the Committee associates patriarchy with traditional beliefs or practices which are prevalent in Third World countries, including Sierra Leone. Such practices include FGM, sexual initiation practices, early and forced marriage, polygamy, son preference, and violence against women, see Mudgway, n 48 & n 60.

[70] Emile Boonzaaier and John S. Sharp, *South African Keywords: The Uses & Abuses of Political Concepts* (John Phillip 1988)154.

are of male origin and are perceived to be 'concerned with the silencing of women' having failed to accommodate women's experiences.[71] By failing to focus on gender issues, such theories tend to reproduce the supremacy of men. On the contrary, feminist critical theory focuses on gender issues with a view to understanding and challenging all forms of contemporary subordination, domination, and oppression.

Western theories of law have made a distinction between law and society, viewing law as an autonomous entity, and as a legal system different from political or economic systems. As discussed earlier, feminists' view is that law is not divorced from, but is intricately linked with such systems.[72] So asking the woman question,[73] helps to expose laws' violence.[74] Application of the feminist perspective should therefore help provide appropriate answers to Bush wives' experiences of conflict-related forced marriages.

However, the increasing importance of gender has not clarified exactly what 'feminism' means. Feminism has been variously defined, but this thesis adopts Halley's minimalist definition of feminism,[75] as it best reflects the ethos of this thesis. For a project or argument to qualify as feminist, Halley claims that it must have three essential characteristics. First, it must make a distinction between m and f: with 'm' representing men, male or masculine, while 'f' stands for women, female or feminine. Second, the project must posit subordination between m and f, in which f is the disadvantaged element. Third, in rejecting or opposing this subordination of f, 'feminism carries a brief for 'f'.[76] Based on Halley's essential characteristics this thesis qualifies to be described as feminist project. Its focus is on women, the Bush wives, their negative experiences as females in a patriarchal society, and its aim to create awareness about the plight of Bush wives.

Levit and Verchick identify two shared features of all feminists' theories which are essentially the same as Halley's three-tiered definition. The first is an observation: all feminists recognize that the world has been shaped by men, particularly white men, who as a result acquire the lion share of power and privileges. All feminist legal scholars emphasize the point that all public laws in the history of existing civilization were written by men. The second is an aspiration: all feminists believe that women and men should have political, social,

[71] Charlesworth and Chinkin, n 5, 38.
[72] See Charlesworth et. al., n 6, 613, 628.
[73] See de Beauvoir, n 7, 26; see also Fellmeth, n 7, 665.
[74] See Bartlett, n 8, 837ff.
[75] By 'minimalist, she means the 'broadest possible range of feminism available….,'see Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton UP 2006) 17-20.
[76] Ibid.

and economic equality.[77] In this conception, feminism is a legal theory which gives priority to protecting women from harmful differential treatment. Feminism, alongside other movements, seeks to eradicate the problems that women experience because of their sex.

There are as many different feminist theories as women are different. As women differ in culture, body, language, and personality, so does feminism. The unifying ground in feminism is the common interest in combatting women's subordination. Nevertheless, many feminists have divergent views on how to achieve this mandate.[78] The multiple approaches of feminism can be traced to the varied life experiences of women.[79] Given that different 'faces' of feminism have evolved over time,[80] feminists approach international law from different intellectual and personal perspectives Even though they share gender subordination as a common motivation, the perspectives provide varied and sometimes conflicting insights into the problems of women.[81] Notwithstanding the 'conflicts', multiple feminisms can coexist and contribute to scholarship not as 'a single theory in universal agreement'.[82]

Similarly, Hoffman provides a framework to explain feminisms 'as diversity within commonality', by means of a 'momentum concept'.[83] In Sjoberg view, the flexibility of Hoffman's momentum concept is such that feminisms can mean different things to different people, at different times, but still be considered as a part of the same conceptual framework.[84] Hoffman contends that

> *if feminism is to be coherently defined, then…it needs to be conceived as one river with numerous currents rather than as a series of rivers flowing in different and even contradictory directions.*[85]

I believe that a close analysis of the different faces of feminism reveals a single 'broad' face, and therefore adopts Hoffman's analysis by refraining from advancing a singular 'feminist standpoint'. This approach will set a theoretical framework for the response of transitional justice mechanisms to sexual violence

---

[77] Levit and Verchick, n 64, 1.
[78] For divergent views, see Anne C. Herrmann, *Theorizing Feminism: Parallel Trends in the Humanities and Social Sciences* (Routledge 2018); Marianne H. Marchand and Anne Sisson Runyan (eds), *Gender and Global Restructuring: Sightings, Sites and Resistances* (Taylor & Francis Group 2010).
[79] See Ann J. Tickner, 'Hans Morgenthau's Principles of Political Realism: a Feminist Reformulation' in Rebecca Grant and Kathleen Newland (eds), *Gender and International Relations* (Indiana UP 1991) 35; Jill Steans, *Gender and International Relations: An Introduction* (Rutgers UP 1998) 4.
[80] See Olive Banks, *Faces of Feminism: A Study of Feminism as a Social Movement* (Martin Roberson 1981).
[81] See Hilaire Barnett, *Sourcebook on Feminist Jurisprudence* (Cavendish Pub. 1997) 59; Tickner, n 79, 36-37.
[82] Laura Sjoberg, *Gender, Justice and the Wars in Iraq: A Feminist Reformulation of Just War Theory* (Lexington Bks 2006) 37.
[83] John Hoffman, *Gender and Sovereignty: Feminism, the State and International Relations* (Palgrave 2001) 8, 44, 50; see Sjoberg, n 82, 37.
[84] Sjoberg, n 82, 37.
[85] Hoffman, n 83, 46.

in conflict situations. This thesis shall therefore de-emphasize debates among feminists, and instead focus on the contributions of the different feminisms to the emancipation of the woman. Disagreements shall only be discussed when they constitute important contributions to a more complete understanding of legal situations.

Internationally, feminism aims at realizing the liberation of women from all types of oppression. However, the remarkable difference is the gap between North and South. While women from the South are often confronted with poverty and awful labour conditions, women from the North face are harvesting the fruits of capitalism and global economy.[86] People do not think alike, same with feminists. The difference between Western and Third World feminism is in the way women are perceived and processed through the legal system.[87]

Third World feminism does not consider gender discrimination as the sole nor the primary site of oppression of Third World women. According to them, other types of oppression such as race, culture and imperialism and economic exploitation are also involved. In their view, feminism is more widely defined as a struggle against all forms of injustice to attain advancements in women's rights.

Many feminists' scholars ignore the reality of the experience of women in the Global South and women of colour in the North, by mainly concentrating on gender and class as the dominant factors in the oppression of women.[88] It is pertinent to note that the concerns of the African woman are like those of other non-white women, especially those living in third world countries, in areas like inheritance law, custodial rights, marriage and divorce. These areas are still governed by culture and customary law despite formal legal equality in statutory laws. These negative traditional cultural structures which hinder her from fulfilling her potential, are as important as gender in any approach to end inequality.

The Western feminist theories that ignore these 'global contradictions',[89] have been criticized for describing Third World women only 'in terms of

[86] See Shalini Singh, 'From Global North-South Divide to Sustainability: Shifting Policy Frameworks for International Development and Education' (2020) 9(1) International and Multidisciplinary Journal of Social Sciences 76, 81.

[87] Barnett, n 81, 132-133; Jo Bridgeman and Susan Mills, *Feminist Perspectives on Law: Law's Engagement with the Female Body* (Sweet and Maxwell 1998) 8-9.

[88] See 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 UP 1991) 314; see also Charlesworth and Chinkin, n 5, 47; and 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 Hum.Rts.Q. 691, 725-730.

[89] See Vasuki Nesiah, 'Toward a Feminist Internationality: a Critique of U.S. Feminist Legal Scholarship' (1993) 16 Harv Women's L. J. 189, 190-192.

disadvantage';[90] a view that closely follows Western human rights normative framework that regards African women as 'victims' and men as 'savages'.[91] To Mohanty, Western feminist interest in the non-Western world is skewed, like that of a 'tourist, international consumer, and an open- minded explorer'.[92] According to Lam, Western feminism is 'too cleanly and detachedly representational, with little connection to the ongoing lives of women who have experienced racial or colonial discrimination'.[93] Consequently, African feminists argue that until feminism speaks every woman's language, it is believed that benefits for the African woman shall continue to be elusive.[94]

Sanusi argues that to protect, promote and ensure all women's human rights, feminist legal theory must be representative. She concludes that feminist legal theory is not representative because of its reliance on essentialism, and exclusion of the manifestations of racial and cultural discrimination.[95] And the outcome is partial success of the feminist project as African women are not fully represented, and the implementation of any policy decisions are unlikely to meet their needs. Its partial success means it has failed the African woman. The failure of the feminist project is reflected in the ineffective way transitional justice mechanisms address key African women's issues, such as forced marriage.

The divergent feminist perspectives do not detract from the critical woman-centered approach to the resolution of the woman question. The focus on gender-specific issues and the quest to eradicate women's second-class status in society is the 'common room'[96] shared by Western and African feminisms. This thesis will therefore adopt an approach that incorporates both Western and African feminists' common room ideology that are relevant to its main argument. The thesis' main argument is in line with both African[97] and Western feminists'[98] view of society as fundamentally a patriarchy. Where there are major differences, it will adopt the approach that which supports its main argument.

---

[90] Chandra Talpade Mohanty, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' (1988) 30 Feminist Review 61, 66-78.
[91] Makau Mutua, 'Savage Victims and Saviours: The Metaphor of Human Rights' (2001) 42 Harv.Int'l L.J. 201.
[92] Chandra Talpade Mohanty, 'Under the Western Eyes: Revisiting Feminist Solidarity through Anti-Capitalist Struggles' (2003) 28 Signs and Journal of Women Culture Society 499, 518-521.
[93] Maivan Clech Lam, 'Feeling Foreign in Feminism' (1994) 19 Signs: Journal of Women Culture 865, 866.
[94] See Bell Hooks, *Feminist Theory from Margin to Center* (Pluto Press 2000) xii-xiv.
[95] SAA Sanusi, 'The Mule of the World: Race, Culture and Essentialism in Feminist Approaches to International Human Rights Law – An African Perspective' (PhD Thesis, LSE, 1999) 15.
[96] Borrowed from André Kaboré, 'Differentiating African and Western Feminisms through Room Symbolism' (2017) 5(6) Linguistics and Literature Studies 408.
[97] See Nkiru Nzegwu, 'Gender Equality in a Dual–Sex system: The Case of Onitsha' (1994) *Jenda: A Journal of Culture and African Women Studies* 73.
[98] Radical feminists argue that men oppress women through patriarchal appropriation, see Levit and Verchick, n 64, 20ff.

This thesis shall view conflict-related forced marriage and sexual violence through different lenses, bearing in mind the interdisciplinary nature of feminism. Central to the discussion are the following common feminists' perspectives: feminists' identification with the marginalization of women and of feminine values worldwide; and attempts to understand how gender affects human lives. This perspective is based on the belief that women are often treated poorly, and that such treatment is tied to their gender identities.[99] The thesis will analyze feminists' perspectives on the gendered lives of women in post-conflict societies and will argue that the role of transitional justice mechanisms in constructing, perpetuating and masking gender inequality is often overlooked in academic literature. Given that 'a gendered perspective need not be entirely encapsulated within a feminist rhetoric,'[100] this thesis will also cover critical socio-legal theories on transitional justice.

1.4. Definition of Concepts

Unless defined in the text, the terms used in this thesis are defined here, given that, as noted by UNFPA, terminology continue to evolve and there is no universal consensus on the terminology used in the collection of data on violence against women.[101] Perpetrator is defined as *'a person (or group of persons) who commits an act of SEA or other type of crime or offence'102* The concept of 'sexual violence' is broadly understood to cover all violations of sexual autonomy and sexual integrity, and is often characterized by humiliation, domination, and destruction.[103] Sexual violence includes rape and other forms of sexual assault, such as forced marriage, molestation, sexual slavery, being forced to undress or being stripped of clothing, and insertion of foreign objects into the genital opening or anus.[104] Gender-based violence refers to harmful acts directed at an individual based on their gender. It is rooted in gender inequality, the abuse of

---

[99] Sjoberg, n 82, 37.

[100] Martha Albertson Fineman and Estelle Zinsstag, 'Introduction: Feminist Perspectives on Transitional Justice' in Martha Albertson Fineman and Estelle Zinsstag (eds), *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice* (Intersentia 2013) 1, 2.

[101] 'Definitions of many of the most used terms vary historically and culturally, and vary among organizations and sectors, such as among healthcare providers and legal professions. Definitions also vary among researchers of different disciplines. Some terms remain sensitive and contentious.' See Henrica A.F.M. (Henriette) Jansen, *Measuring Prevalence of Violence Against Women: Key Terminology* (UNFPA 2016) < https://asiapacific.unfpa.org/sites/default/files/pub-pdf/kNOwVAWdata%20Key%20Terminology.pdf > accessed 12 May 2022.

[102] UN, 'Glossary on Sexual Exploitation and Abuse: Thematic Glossary of Current Terminology Related to Sexual Exploitation and Abuse (SEA) in the Context of the United Nations' (UN 2016).

[103] See The Hague Principles on Sexual Violence 11 < https://4genderjustice.org/ftp-files/publications/The-Hague-Principles-on-Sexual-Violence.pdf > accessed 28 August 2023 for the elaboration of these and other specific examples of acts of sexual violence. The Hague Principles on Sexual Violence comprise the Civil Society Declaration on Sexual Violence, the International Criminal Law Guidelines on Sexual Violence and Key Principles for Policy Makers on Sexual Violence. [Hereinafter Hague Principles]

[104] Ibid, 16-19, 39-51.

power and harmful norms.[105] The term 'conflict-related sexual violence,' in a peace keeping context, refers to rape, forced marriage, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls, or boys that is directly or indirectly linked to a conflict.[106]

1.5. The Hypothesis

An argument that proceeds from the research question is that the lack of respect for women's human rights in rural Sierra Leone is key to the harms women experienced before, during and after the war. This is the hypothesis that will be propounded, expounded and supported with empirical evidence such as patriarchal beliefs of male, heterosexual dominance and the devaluing of girls and women are responsible for the incidences of gender-based violence. Patriarchal power structures exacerbated existing injustices and created new ones for the Bush wives. As stated above it is hypothesised that lack of respect for women's human rights in rural Sierra Leone is key to the harms women experienced before, during and after the war.

It is further argued that the failure of the government of Sierra Leone and its institutions to critically address women 's concerns, and in particular the issue of discrimination against Bush wives, influenced the decisions of the Bush wives to return to the potentially violent situation of co-habiting with their ex-abductor husbands. The reliance on patriarchal norms for the implementation of transitional processes led to a preoccupation of transitional justice with public harms and the 'primary' conflict. It also led to the failure to take into consideration the implications of private harms for female victims of sexual violence. The resultant gaps call for alternative restorative strategies. In other words, after war, measures taken by state and international bodies intervention should rectify suffering inflicted on the Bush wives. Rather than effective intervention, the female population was failed for the second time; the first time being sociologically explicable, while the second being a matter lack of policy and political will.

1.6. Case Study -Sierra Leone

Sierra Leone is situated on the West Coast of Africa, North of the Equator. Sierra Leone shares its borders with Guinea on the North and North-East, Liberia on the South-East, and on the West, the Atlantic Ocean. It also shares similar patriarchal attitudes, some cultural and traditional aspects of colonial experiences, and the inferior position of their womenfolk in society with its neighbors. There are

[105] See generally Jansen, n 101.
[106] UN Peacekeeping, 'Conflict Related Sexual Violence' < https://peacekeeping.un.org/en/conflict-related-sexual-violence > accessed 28 August 2023.

therefore cross border influences and very similar perceptions and attitudes towards the development of women in the two countries. It contains all the components and determinants of the hypothesis.

1.6.1. Historical Background

A small developing country, Sierra Leone is approximately 72,000 square kilometre in size, with a 485-kilometre Atlantic coastline.[107] Its population is made up of about 7,976,983 people, with an ethnic, cultural, and religious conglomeration. Islam is the predominant faith, with its adherents comprising over 60% of the population, about 30% Christians and approximately 10% are Atheists, Bahais, Buddhists and traditional indigenous religious believers.[108]

Sierra Leone was inhabited by several tribes and ethnic groups long before it was 'discovered' by the Europeans. The name Sierra Leone is derived from the Portuguese '*Serra Lyoa*', which means 'Lion Mountains', named by the Portuguese explorer Pedro Da Cintra in 1462.[109] Freetown, the capital of Sierra Leone was founded by the British in 1787, to accommodate the 'emancipated' freed slaves from Europe and the Americas. Slaves on ships intercepted on the Atlantic Ocean after the abolition of the slave trade were also sent to the country. It also became home to the 'black poor' or 'black loyalists' from Britain, between 1787 and 1855. The descendants of these new immigrants, the Creoles, were perceived as 'black Englishmen' because they assimilated Western culture and the British way of life. This was in line with the desire of the founders to create a 'civilised' African society, with the trappings of Western culture.[110] This Western culture however, did not dilute the influence of the customs and traditions on people living in the rural areas.

1.6.2. Colonialism

In 1808, Freetown became a British Crown Colony and served as the residence of the British Governors. In 1896, the rest of the country acquired British Protectorate status. Independence from Britain was realized in 1961, after the merger of the colony and the protectorate as a single political system.[111] The merger of both units afforded an opportunity for the indigenes or non-natives, the freed slaves, and the re-captives to jointly govern the newly independent state of Sierra Leone.

---

[107] Shekou M Sesay et. al, 'Sierra Leone' *Britannica Encyclopedia* (Updated 2023) < https://www.britannica.com/place/Sierra-Leone> accessed 14 July 2023.
[108] See US Department of State, '2016 Report on International Religious Freedom - Sierra Leone' 15 August 2017. <https://www.refworld.org/reference/annualreport/usdos/2017/en/118294> accessed 05 March 2023.
[109] JAD Alie, *A New History of Sierra Leone* (Macmillan Pub. 1990) 33.
[110] Ibid, 48-53.
[111] Ibid.

The state is governed by different legal systems. While public law applies to all individuals, an individual's personal law[112] is determined by whether he or she is a native or non-native. Natives are governed by customary law, while non-natives are governed by the general law.[113] In general, Islamic law is part of customary law, as the Appeal court ruled in *Re Estate of Turay, Turay* v *Carew*.[114] Tejan J (as he then was) stated as follows: *'Mohammedan Law is customary law applicable to those who profess Moslem faith.'* As rural dwellers, Bush wives are classified as natives and governed by customary law,[115] hence the focus of this thesis on customary law and marriage in Sierra Leone.

Sierra Leone is made up of 17 (seventeen) different ethnic groups[116] each with its own language, culture, and tradition.[117] There are similarities as well as marked differences in their customary law.[118] The Temnes, in the North and the Mendes, in the South and East are the two largest ethnic groups in the country.[119] Many of the Bush wives come from both tribes. The Limbas, the third largest group, also occupy the North with the Temnes. The Creoles occupy the Western Area and the capital city of Freetown. There are Muslims among the Mendes and Temnes, but Islamic law is regarded as a variant of customary law,[120] as it has been *'tinged with the customs and traditions of the indigenous people.'*[121]

Both Christianity and Islam have also modified some of the cultural practices, but with stronger Islamic influence and practices.[122] In practice, the differences between the situation of women married under customary law and Islamic law are few, because the underlying principles of the customary family laws of the different ethnic groups are similar.[123] In discussing customary marriage therefore,

---

[112] 'Mainly base on ethnocultural and religious distinctions, personal laws tend to cover family law and property matters and some religious issues.' *The Oxford International Encyclopedia of Legal History* (vol. 4, Oxford UP 2009).
[113] A native is 'a citizen of Sierra Leone who is a member of a race, tribe or community settled in Sierra Leone, other than a race, tribe or community (a) which is of European or Asiatic or American origin; or (b) whose principal place of residence is in the Western Area; "non-native" means any person other than a native'; see the 1973 Sierra Leone Citizenship Act, s. 29(3), amends Interpretation Act 1971, s. 4(1).
[114] [1972-73] ALR SL 177, 191 (HC).
[115] See n 113; HM Joko Smart, *Sierra Leone Customary Family Law* (Atlantic Printers 1983) 16.
[116] See Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Chapter 3: Women and the Armed Conflict in Sierra Leone) (Volume 3B, Graphic Packaging Ltd. 2004) 85 [Hereinafter 3b (3) TRC Report].
[117] Cyril P. Foray, *Historical Dictionary of Sierra Leone* (Scarecrow 1977).
[118] Joko Smart, n 115, 16; Barbara E. Harrell-Bond and Ulrica Rijnsdorp, *Family Law in Sierra Leone: a Research Report* (Afrlka-Studlecentrum 1975) 103-106.
[119] Ida E. P. Lisk and Bernadette L. Williams. 'Marriage and Divorce Regulation and Recognition in Sierra Leone' (1995) 29 Fam.L.Q. 655.
[120] See n 115.
[121] HM Joko Smart, 'The Place of Islamic Law within the Framework of the Sierra Leone Legal System' (1980) J Legal Plur 87.
[122] Lisk and Williams, n 119, 655.
[123] See Harrell-Bond and Rijnsdorp, n 118, 104.

this thesis will use the term customary law to include Islamic law, unless it would lead to absurd conclusions.

1.7. Why this Study?

Most research on 'women and war' in Sierra Leone focus on the failure of the transitional justice processes and the government of Sierra Leone to effectively address the human rights of women after the war. Mazurana and Carlson; Coulter; MacKenzie; Fithen and Richards highlight the exclusion of women and its consequences from the Disarmament, Demobilization, and Reintegration processes.[124] They suggest how women's needs and priorities could have been addressed. Other authors explore the multiple roles women play during the war while challenging the gendered stereotypes of 'woman the victim' and 'man the perpetrator'. Rejecting the role of women in war as passive victims with a corresponding lack of 'agency', these studies emphasize the role of women as perpetrators of violence, including sexual violence.[125] Others address the nature of wartime forced marriage and its criminalization.[126] Some researchers investigate the post conflict adjustment and community reintegration of women. Betancourt et. al. studied the psychosocial adjustment and community reintegration of former female as well as male child soldiers.[127]

However, no author has specifically addressed how the adoption of local justice and reconciliation practices may impede justice and create injustice for the Bush

---

[124] Hereinafter DDR; see Dyan Mazurana and Khristopher Calson, *From Combat to Community: Women and Girls of Sierra Leone* (Hunt Alternatives Fund 2004); Chris Coulter, *Bush Wives and Girl Soldiers: Women's Lives through War and Peace in Sierra Leone* (Cornell UP 2009) 304; Megan MacKenzie, 'Securitization and Desecuritization: Female Soldiers and the Reconstruction of Women in Post-Conflict Sierra Leone' (2009) 18(2) Security Studies 241; Caspar Fithen and Paul Richards, 'Making War, Crafting Peace: Militia Solidarities and Demobilization in Sierra Leone' in Paul Richards (ed.), *No Peace, No War: An Anthropology of Contemporary Armed Conflicts* (James Currey 2005) 117; Binta Mansaray 'Women Against Weapons: a Leading Role for Women in Disarmament' in Anatole Ayissi and Robin Edward Poulton (eds), *Bound to Cooperate: Conflict, Peace and People in Sierra Leone* (UN Institute for Disarmament Research 2000) 139.

[125] See Dara Kay Cohen, 'Female Combatants and the Perpetration of Violence: Wartime Rape in the Sierra Leone Civil War' (2013) 65(3) Wld.Pol. 383; Dara Kay Cohen, 'Explaining Rape during Civil War: Cross-National Evidence (1980–2009)' (2013) 107(3) APSR 461; Chris Coulter, 'Female Fighters in the Sierra Leone War: Challenging the Assumptions?' (2008) 88(1) Feminist Review 54; A. Brouwer and L. Ruiz, 'Male Victims and Female Perpetrators of Sexual Violence in Conflict' in S. Mouthaan and O. Jurasz (eds.), *Gender and War: International and Transitional Justice Perspectives* (Intersentia 2019) 169; V. Vojdik, 'Towards a Gender Analysis of Sexual Violence Against Men and Boys in Conflict: Incorporating Masculinities Theory into Feminist Theories of Sexual Violence Against Women' in S Mouthaan and O Jurasz (eds), *Gender and War: International and Transitional Justice Perspectives* (Intersentia 2019) 95.

[126] Iris Haenen, 'Forced Marriages in Conflict Situations' in *Forced Marriage: the Criminalisation of Forced Marriage in Dutch, English and International Criminal Law* (Intersentia 2014) 65; Valerie Oosterveld, 'The Special Court for Sierra Leone, Child Soldiers, and Forced Marriage: Providing Clarity or Confusion?' (2008) 45 Can. Y.B. Int'l L. 131; Joseph F. Kamara, 'Preserving the Legacy of the Special Court for Sierra Leone: Challenges and Lessons Learned in Prosecuting Grave Crimes in Sierra Leone' (2009) 22 LJIL 762; Christine Bell and Catherine O'Rourke, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay' (2007) 1 (1) I.J.T.J. 23, 25-30.

[127] Theresa Stichick Betancourt et. al., 'Sierra Leone's Former Child Soldiers: a Follow-Up Study of Psychosocial Adjustment and Community Reintegration' (2010) 81(4) Child Development 1077.

wives. None has discussed how customary law practices may negatively impact the post-conflict experiences of the survivors of forced marriages. Very few studies have focused on the needs and priorities of Bush wives who were compelled to remain, or return to their ex-abductors, especially in relation to discriminatory customary law and practices against women. Coulter and Davies came close. Davies examines the impact of the absence of meaningful changes to the discriminatory constitutional, statutory and customary laws and policies on the post war experiences of women in general.[128]

Focusing on the perspectives of women, Coulter examines the effect of war and its aftermath on the lives of the women of Northern Sierra Leone, many of whom were Bush wives.[129] Chris Coulter in her book on 'Bush wives and Girl Soldiers'[130] shows how prevailing notions of gender inequality caused female ex-combatants to be excluded in the DDR processes. Many of these women found it extremely difficult to return to their families, and, without institutional support, some were forced to turn to prostitution to eke out a living.

This thesis thus fills an existing gap in the literature and aims to show how through the indiscriminate adoption of local justice and reconciliation practices, transitional justice mechanisms may become tools of injustice. It also shows that the extant post conflict discriminatory constitutional, statutory and customary laws and policies may have contributed to the promotion of discrimination against the Bush wives. Cognizant of the gendered stereotypes of 'woman the victim' and 'man the perpetrator' this thesis does not disregard the role some Bush wives played in pro-government and rebel forces as perpetuators and perpetrators of war and conflict.[131] However, it argues that the lack of 'agency' of many female combatants may have made them 'involuntary' perpetrators.[132]

The nature of this research is therefore about the post-conflict experiences of survivors of forced marriages especially in the context and set against the background of patriarchal laws and norms. The study looks at how and in what ways the experiences of this small percentage of rural women may contribute and support change in discriminatory norms and attitudes, and ultimately in the lives

---

[128] Pamela O. Davies, 'Marriage, Divorce, and Inheritance Laws in Sierra Leone and Their Discriminatory Effects on Women' (2005) 12 Human Rights Brief 20.
[129] Coulter, n 125.
[130] Coulter, n 124.
[131] Coulter, n 125, 54; Mazurana and Carlson, n 124, 2; compare African Rights and Yvonne Leggat-Smith, *Rwanda- Not So Innocent: When Women Become Killers* (African Rights 1995).
[132] see Charlotte Lindsey, Women Facing War: ICRC Study on the Impact of Armed Conflict on Women (ICRC 2001) 22; this assertion is supported by a survey of 50 female ex-combatants almost all of whom stated 'abduction' was their means of joining the fighting forces and the paucity of women - only 4,751 women (6.5 percent) and 6,787 children (9.4 percent), of whom 506 were girls - who had passed through Sierra Leone's official DDR programme by December 2003, see Mazurana and Carlson, n 124, 2.

of women in African society. By focusing on the downtrodden, underprivileged rural women who are customarily denied human rights and a good standard of living, the thesis seeks to go beyond the 'academic' realm and bring into open society and the political realm, the plight of the Bush wives. Hopefully, this intervention will generate information and ideas which could result in ameliorating entrenched patriarchal laws and norms in society, improve governmental policies, and thus promote women rights.

1.7.1. Limitations of the Study

Relying on data collected by a third party affected the conclusions of this thesis, as I could not verify his findings. My conclusions are therefore subject to his bias and errors. Moreover, the number of Bush wives who were agreed to be interviewed by the Social Worker was too small to be representative of the target population.[133] A visit to Sierra Leone and personal engagement with the Bush wives, though not without challenges, would have yielded better results. This thesis seeks merely to describe the experiences of bush wives; space does not permit examination of the experiences of children born in forced marriages. A further study that would deal with these aspects of the subject is needed for a full picture to emerge.

1.8. Concluding findings of the Thesis.

Applying the literature on women's human rights on the Sierra Leone situation, the following six chapters attempt to prove that the customs and traditions of rural Sierra Leone were mainly responsible for the harms the Bush wives experienced during and after the war. In conclusion, I will argue that the way women are viewed in rural Sierra Leone is key to the harms women experienced before, during and after the war; that entrenched patriarchal power structures exacerbated existing injustices and created new ones for the Bush wives. Using international instruments, case law, secondary literature as well as the voices of the Bush wives, this thesis gathered and analyzed the war and post-conflict experiences of the survivors of conflict-related sexual violence, including forced marriage.

Specifically, it sets out to prove that customary law and amnesties contribute greatly to the culture of impunity still prevalent years after cessation of hostilities; that despite Sierra Leone's ostensible commitment to gender equality, patriarchal norms and views were often generally accommodated and reinforced rather than challenged and changed in practice. The deeply entrenched gender stereotypes and widespread prejudices in Sierra Leonean rural society made transitional justice a meaningless concept for Bush wives recovering from sexual violence

[133] Only 8 Bush wives attended the online meeting.

and abuse. Finally, it proves that Sierra Leone is a country where private patriarchy is dominant, especially in the rural areas.

2. Chapter Two: 'Bush Wives' in Post-Conflict Sierra Leone

2.1. Introduction

Applying the literature on women's human rights, in this chapter I will analyse the phenomenon of 'Bush wives' within the social life (social norms and sociocultural values of the lived experiences) of rural women in Sierra Leone. The basis of the analysis will include but will not be limited to the status, rights and duties arising out of traditional arranged / customary law marriages compared with conflict and post-conflict marriages.

Sexual violence has been widely acknowledged as a weapon of war, a gendered impact of war;[134] and an act of feminization.[135] The **1995 Beijing Declaration and Platform of Action**, [136] for example, states: *'while entire communities suffer the consequences of armed conflict and terrorism, women and girls are particularly affected because of their status in society and their sex'*[137]

Although men are also subjected to war-time gender-based and sexual abuse, victims are almost exclusively women. Enloe identified three types of institutionalized wartime rapes: recreational, national security, and genocidal; all of which are steeped in gender oppression.[138] In addition, the forms of violence used against women differ from that of men. Women usually face torture, rape, mass rape, sexual slavery, enforced prostitution (involuntary or semi-voluntary), forced marriage, forced sterilization and the forced termination of pregnancies, and mutilations.[139] The manner in which perpetrators carry out these heinous acts, are also closely linked to gender relations in the society and culture.[140] The prevalence of wartime sexual violence shows that gender identity plays a vital role in women's lives both during and after war.

Societies with cultures of violence and discrimination against women prior to conflict, are likely to have increased incidences during conflict. For example, rape rates are usually higher during wartime than in times of peace.[141] Sexual violence perpetrated against women during and after war is also linked to the gendered

---

[134] Sjoberg, n 82, 89.
[135] See Sjoberg, n 82, 88; UN, *Women, Peace and Security: Study Submitted by the Secretary-General Pursuant to UNSC Res 1820 (2008)* (19 June 2008) para. 59.
[136] (adopted 15 September 1995) A/CONF.177/20 (Fourth World Conference on Women) [Hereinafter 1995 Beijing Declaration].
[137] Ibid, para. 135.
[138] See V Spike Peterson and Anne Sisson Runyan, *Global Gender Issues in the New Millennium* (4th ed., Westview Press 2014) 164.
[139] UN, n 135, para. 58.
[140] Ibid; see also Coomaraswamy, n. 48.
[141] Catherine MacKinnon, *Only Words* (Harvard UP 1993) xiii; see also Jonathan Gottschall, 'Explaining Wartime Rape' (2004) 41(2) Journal of Sexual Research 1-8; Claudia Card, 'Rape as a Weapon of War' (1996) 11(4) Hypatia 5.

role of women in society. Like most African women, women in Sierra Leone occupy subordinate positions, and this was often reflected during the war.[142] The marked differences between the roles of urban and rural women[143] due in part, to the stricter cultural conventions rural women face and the higher level of poverty in rural areas,[144] are also reproduced in their experiences during war. This is evident in the conflict and post-conflict experiences of Bush wives, the survivors of forced marriage in rural Sierra Leone.

The main argument of this chapter is that the harms the Bush wives suffered during their original forced marriage and the role of consent and coercion in their return to their abductors are not different from the lived experiences of the rural women of Sierra Leone. The socio-cultural coordinates of the lived experiences of the rural women were, apart from a few exceptions, replicated and inextricably linked to the harms the Bush wives experienced during and after the war. A brief overview of the civil war that created forced marriages, will advance our understanding of the phenomenon and the harms the Bush wives suffered in their original forced marriages and afterwards.

2.2. Brief Overview of the Sierra Leonean Conflict

The civil conflict in Sierra Leone which started in 1991 was particularly brutal as attacks against the civilian population was a major military strategy of all the fighting factions. Consequently, during the eleven-year-long conflict, grave crimes were committed with impunity by the organized armed factions, against civilians, including women and children, who were suspected or perceived to be supporters of 'the enemy.'[145] Civilians who were not killed outright were subjected to grievous physical and sexual violence. The use of civilians as forced labour to work the diamond mines and for various tasks, including farming, portage of looted goods, arms, and ammunition, were some of the minor atrocities committed by the fighters. Heinous crimes such as mutilation of limbs and indiscriminate murder were common occurrences.[146]

Other grievous atrocities committed by the factions, included the use of conscripted child soldiers, large scale looting and arson and massive sexual

[142] Coulter, n 125, 59, 60-61.
[143] Coulter, ibid, 58.
[144] Farming, an occupation associated with poverty in Africa is the main occupation of rural dwellers in Sierra Leone; majority of 70% of those engaged in subsistence farming are women; Ibid, 64, 66.
[145] The major factions were the Revolutionary United Front [Hereinafter RUF]; and the Armed Forces Revolutionary Council [Hereinafter AFRC)], who separately and jointly fought against the Sierra Leonean government. The regular Sierra Leone Army [hereinafter SLA] was supported by the Kamajors/ Kamajoi militia (renamed the Civil Defence Forces) [Hereinafter CDF], who were a group of traditional hunters from south and east of Sierra Leone; see Yusuf Bangura, 'Strategic Policy Failure and Governance in Sierra Leone' (2000) 38(4) JMAS 551.
[146] Mutilation of limbs 'was used as a tool of terror and control, as well as a [sic] a symbolic message to those who voted for the government of former president Kabbah.' See Kamara, n 126, 763.

violence against girls and women. Rape and sexual slavery of women and girls and coercion of women and girls as 'Bush wives' of combatants were tools used to terrorize civilians and to help 'maintain the morale' of the fighters.[147] More than 200,000 people are estimated to have been killed, and hundreds of thousands more were either internally displaced or fled the country.

The atrocities committed were believed to be the most inhuman perpetrated against a civilian population in the history of contemporary conflicts.[148] After several failed peace talks, the war finally ended in January 2002 after the intervention of the Economic Community of West African States Monitoring Group (hereinafter ECOMOG)[149] and the UN Mission in Sierra Leone (UNAMSIL). Although the atrocities committed were arguably the most inhumane perpetrated against a civilian population in the history of contemporary conflicts, the global community failed to act decisively and to demonstrate its commitment to accountability for the crimes committed by bringing the perpetrators to justice.

The specific factual circumstances of forced marriages in Sierra Leone during the conflict were extensively described in the two decisions of the AFRC Trial Chamber and the RUF Trial Chamber of the SCSL.[150] The thesis will focus on the former, since the pattern of the conduct of forced marriage noted by the later was similar to the experiences of victims of forced marriage under the AFRC regime.[151]

2.3. The Phenomenon of 'Bush wives' During the War

During the SCSL trials, witnesses, including victims and experts, gave evidence of the practice of forced marriage during the hostilities.[152] Fatmata Jalloh, for example, was selling pancakes on a rural road in Sierra Leone when a rebel soldier kidnapped her and made her his wife. She testified thus: *I was a child. I didn't know anything about love at that time. But he said, "If you don't take me [as your husband], I'll kill you,"* Jalloh said. As his wife, Jalloh was forced to perform sexual

---

[147] Ibid.
[148] UNSC, Report of the Secretary General, 'Establishment of a Special Court for Sierra Leone' (27 September 2000) UN Doc S/2000/915, para. 7 [Hereinafter UNSC Report 915]; the Trial Chamber in the AFRC case referred to the crimes as 'some of the most heinous, brutal and atrocious crimes ever recorded in human history'; see *Prosecutor* v *Brima & Ors* (Sentencing Judgement) SCSL-04-16-T (19 July 2007) para. 34 [Hereinafter AFRC Trial Chamber Sentencing Judgment].
[149] A West African multilateral armed force established by the Economic Community of West African States [Hereinafter ECOWAS].
[150] see p. 117ff for details.
[151] As discussed below and 4.3.3.
[152] To obtain a comprehensive picture of what happened the narratives of survivors who returned or remained with their 'husbands' would be analysed in chapter six. It is trite that there is a big difference between testifying in a court setting and in an informal setting.

acts and domestic duties for two years until Sierra Leone's civil war ended. *'There was no way not to do it. If I would leave, I would have no food. He would kill me.'*[153]

As narrated by Jalloh, women and girls were systematically abducted from their homes and communities by the Armed Forces Revolutionary Council troops, in circumstances of extreme violence,[154] and distributed to members who made them 'wives'.[155] The distribution of 'wives' was often organized and supervised by members of the AFRC or civilians.[156] Consequently, some civilians were given 'wives', probably as a reward for their loyalty; as happened in Uganda and the Democratic Republic of Congo.[157] As 'wives', they were compelled to accompany the troops wherever they went,[158] were expected to perform household chores, such as cooking, cleaning, washing clothes and taking care of the so -called husband's property.[159] The so called wives were forced to live with, gratify the sexual desires, endure forced pregnancy, raise the children of the 'marriage' and show undivided love and loyalty to men who they may fear and despise.[160] Most of the women experienced miscarriages and many who contracted Sexually Transmitted Diseases (STD), including HIV, as a result of the sexual violence they were subjected to, had no access to medical facilities in the bush.[161]

Few could escape, as failed attempts attracted severe punishment.[162] They could be killed, if caught, risk capture by another rebel group, or government forces who may kill those suspected of being rebels.[163] A girl interviewed by PHR said: *'I wanted to run away, to escape, but there was no way. If you were caught trying to escape,*

---

[153] Jina Moore, 'In Africa, Justice For 'Bush wives'' Christian Science Monitor (10 June 2008) < https://www.csmonitor.com/World/Africa/2008/0610/p06s01-woaf.html> accessed 22 January 2020.
[154] It was not uncommon for close relations of the victims to be killed in their presence before being abducted. see *Prosecutor* v *Brima & Ors* (Judgement) SCSL-04-16-T (20 June 2007), paras. 111, 1078. [Hereinafter AFRC Trial Chamber Judgment].
[155] Ibid, paras 39, 1823.
[156] Ibid paras. 39, 1115, 1137, 1141.
[157] Brigid Inder, the executive director of the Women's Initiatives for Gender Justice at the Hague, and her group have documented the practice of giving 'Bush wives as reward to commanders and organizing battalions in the Lord's Resistance Army in Uganda, and to soldiers in three separate militias in Congo; see Moore, n 153.
[158] AFRC Trial Chamber Judgment, n 154, paras 1082, 1085, 1091; see also *Prosecutor v Sesay & Ors* (Trial Judgment) SCSL-04-15-T, (2 March 2009) [Hereinafter RUF Trial Judgment] para. 1211.
[159] AFRC Trial Chamber Judgment, n 154, paras. 12, 1455; RUF Trial Judgment, ibid, paras. 1294.
[160] AFRC Trial Chamber Judgment, n 154, Partly Dissenting Opinion of Justice Doherty on Count 7 (Sexual Slavery) and Count 8 ('Forced Marriages') paras. 48 [Hereinafter Justice Doherty's Partly Dissenting Opinion]; see also see RUF Trial Judgement, n 158, paras. 1413, 1468.
[161] Ibid, Justice Sebutinde's Separate Concurring Opinion, paras 13, 15, quoting Prosecution Expert Report on Forced Marriage.
[162] 3b (3) TRC Report, n 116, para. 218; RUF Trial Judgment, n 158, paras. 1212, 1412.
[163] HRW, '"We'll Kill You If You Cry": Sexual Violence in the Sierra Leone Conflict' 42, 43-44 < https://www.hrw.org/report/2003/01/16/well-kill-you-if-you-cry/sexual-violence-sierra-leone-conflict > accessed January 2016.

you were killed or put in a box.'[164] Escaping was made even more hazardous by rebels carving the group's letters 'RUF' or 'AFRC' onto the chests of their 'wives.'[165] In addition, the rebels themselves instilled fear in their young captives:

> *In many instances, women [were] intimidated by their captors and the situation they were in-felt powerless to escape their lives of sexual slavery and were advised by other female captives to tolerate the abuses, 'as it was war.'*[166]

Furthermore, failure to submit to the wishes of their husbands or disloyalty also attracted severe punishment.[167] 'Wives' were abandoned when their 'husbands' got tired of them, or when they became too ill to meet their demands.[168] Although, 'wives' received some security, in the form of food and protection from sexual abuse by other combatants,[169] the usual mutual obligations to be expected in a marriage relationship were absent.

Remarkably, the nature of forced marriage during the war appears to be a replica of marriage by capture, a common occurrence during inter-tribal wars in the olden days.[170] With the cessation of inter-tribal wars in the country and, with the abolition of slavery in 1807, marriage by capture which was thought to be extinct, returned to Sierra Leone from its past, invigorated and with new force.[171] Unlike in the past when the captives were kept as slaves even when war ceased, these women and girls were free to leave their 'husbands' and return home after the war. However, for the Bush wives, integration was difficult as *'they were often unable to return to their schools or communities for fear of reprisals, due to a widespread belief that any person who lives with a rebel leader for more than a day becomes tainted and*

---

[164] Physicians for Human Rights, War-Related Sexual Violence in Sierra Leone: A Population Based Assessment (1 June 2002) 70 < https://phr.org/our-work/resources/war-related-sexual-violence-in-sierra-leone/> accessed 20 March 2019 [Hereinafter PHR Report]. In the Report, the girls interviewed did not say what 'put in a box' means. However, the HRW Report has many accounts of girls 'caged,' or put in wooden cages, and at least one girl referred to such a cage as 'the box'; see HRW, n 163, 31, 32, 43, 45. Punishment was harsh if the girls were recaptured, 3b (3) TRC Report, n 116, para. 218.

[165] Ibid. at 43-44; 3b (3) TRC Report, n 116, 142, 275.

[166] HRW, n 163, 3, 43.

[167] Justice Doherty's Partly Dissenting Opinion, n 160, paras. 14, 32; also see RUF Trial Judgement, n 158, paras. 1466-1472.

[168] HRW, n 163, 43.

[169] Justice Doherty's Partly Dissenting Opinion, n 160, para. 30; compare this with the situation during the 1971 Bangladeshi conflict where soldiers withheld food from women until they submitted to having sex with a designated number of men, see Susan Brownmiller, *Against Our Will: Men, Women and Rape* (Simon and Schuster, 1975) 83.

[170] Joko Smart, n 115, 28-29.

[171] Karine Belair, 'Unearthing the Customary Law Foundations 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(3) Colum.J.Gender & L. 551.

acquires "rebel behaviour"'[172] Coulter notes that often, *'... people feared that rebel women could become violent and wreak havoc in the community.'*[173] As HRW reports:

> *... [Bush wives] are often not able to return to their villages out of fear, lack of funds and social stigma, especially if they have given birth to children fathered by rebels. The women are therefore often forced to remain in situations in which they are vulnerable to continuing abuse*[174]

To find out whether the harms the Bush wives suffered in their original forced marriages are different from, or like the lived experiences of rural women of Sierra Leone, I will analyze the differences between customary law marriage and conflict and post-conflict forced marriages. I will attempt to show that the similarity between the marriages is based on the subordinate role of women in rural Sierra Leone. Unfortunately, despite the recognition of forced marriage by the SCSL as an international crime, the societal negative reactions to the Bush wives persist.[175]

2.4. Essential Elements of Forced Marriage from the Decision on Forced Marriage

The AFRC Appeals Chamber in *Prosecutor* v *Brima & Ors* identified the following essential elements of forced marriage. First, it involves a perpetrator compelling a person by force or threat of force [...] into a conjugal association with another person resulting in great suffering or serious physical or mental injury on the part of the victim.[176] The AFRC Appeals Chamber noted that the forced marital relationship involves mutual obligations for both parties, unlike in situations of sexual slavery. While the 'wives' were forced to perform various duties, including sexual intercourse, domestic labour, forced pregnancy and taking care of and bringing up the children of the 'marriage', [177] the 'husband' was expected to provide food, clothing, and protection, especially against rape by other men. The mutual obligations for both parties of a forced marital relationship, also occurred in Rwanda, where 'husbands' provided for their forcibly married 'wives'.[178] However, where the relationship was not a forced

[172] Ibid, 586.
[173] See Coulter, n 124, 210.
[174] See HRW, n 163, 44-45.
[175] The SCSL AFRC Appeal Chamber was the first-ever international criminal tribunal that decided forced marriage amounts to the crime against humanity of 'other inhumane acts.'
[176] *Prosecutor* v *Brima & Ors* (Appeal Judgment) SCSL-2004-16-A (22 February 2008) para. 195 < https://www.rscsl.org/Documents/Decisions/AFRC/Appeal/675/SCSL-04-16-A-675.pdf> accessed 12 October 2023. [Hereinafter AFRC Appeal Chamber Judgment].
[177] Ibid, para. 190.
[178] HRW, Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath (24 September 1996) 37 < https://www.hrw.org/report/1996/09/24/shattered-lives/sexual-violence-during-rwandan-genocide-and-its-aftermath > accessed 11 March 2016.

marriage, no mutual obligation existed, as happened in Bangladesh during the 1971 conflict.[179]

Secondly, the SCSL found that unlike sexual slavery, forced marriage implies a relationship of exclusivity between the 'husband' and 'wife', which could lead to disciplinary consequences for breach of this exclusive arrangement…'[180] The exclusivity of this conjugal relationship, according to the ICC Chamber, is *'the characteristic aspect of forced marriage'*, an element distinguishing the crime from sexual slavery and other crimes against humanity.[181]

Thirdly, contrary to the AFRC Trial Chamber's finding, the AFRC Appeals Chamber recognized that the effect of the 'forced conjugal association' on the physical, mental, and psychological health of the victims, severe suffering and the consequent long-term stigmatization of the victims and their children**,** was grave enough to constitute a separate, distinguishable crime against humanity of forced marriage.[182] The physical injury consists of being subjected**:** to *'repeated acts of rape and sexual violence, forced labour, corporal punishment, a deprivation of liberty.'*[183] The psychological trauma involved being forced to watch close family members being killed or mutilated by the same men who made them 'wives' and bearing the label of 'wife' resulted in their being ostracized from their communities.[184] In addition, the Appeal Chamber noted that many of the victims of forced marriage were children themselves.[185]

2.5. Harms Arising from Conflict-Related Forced Marriages

Commonly called 'Bush wives' or 'rebel wives' during the conflict, many were chased away from home and faced widespread discrimination afterwards.[186] Most of the victims interviewed by the Prosecution expert were rejected, stigmatized,[187] and left out by their families and communities, at the end of the conflict.[188] The prosecutor argued that victims of forced marriage face serious psychological and moral injury, and their rejection by families and community due to the label of 'wife' had a negative impact on their ability to reintegrate into society and thereby prolong their mental trauma.[189] The age of the victims of forced marriage,

[179] See Brownmiller, n 169, 83.
[180] AFRC Appeal Chamber J, n 176, para. 195.
[181] *Situation in Uganda, Prosecutor* v *Ongwen* (Decision on the Confirmation of Charges) ICC-02/04-01/15 (23 March 2016) para 93.
[182] AFRC Appeal Chamber J., n 176, paras. 197-202.
[183] Ibid, paras 199.
[184] Ibid.
[185] Ibid, para 200
[186] Justice Doherty's Partly Dissenting Opinion, n 160, paras. 16, 33, 42, 48.
[187] IRIN, Sierra Leone: 'Forced Marriage' Conviction a First', 26 February 2009 https://www.refworld.org/docid/49ab9a121a.html accessed 1 July 2021.
[188] See 3b (3) TRC Report, n 116, 165-66, 197-99, 320.
[189] Justice Doherty's Partly Dissenting Opinion, n 160, para. 48.

according to her, makes them particularly vulnerable and their vulnerability was heightened by the physical and sexual violence they were subjected to, away from home.[190]

Bush wives who were not chased away from their homes found it difficult to settle down due to the stigmatization they faced. Finding integration difficult, the only option left for some of these women on leaving their 'husbands' who, at least, provided them with minimal protection and means of support,[191] was commercial sex work.[192] Some returned to their ex-abductor husbands. Some, particularly those who were abducted young and had children fathered by rebels, considered *'themselves married ... and believ[ed] that they [had] no choice but to remain with their husbands.'* The number of 'wives' who remain with their abductors today is unknown.[193] The negative reactions of families and communities to the Bush wives cannot be divorced from the subordinate position of women in rural Sierra Leone. This is evidence of lack of respect for women's human rights in rural Sierra Leone, which is a direct consequence of the harms women experienced before, during and after the war.

In Sierra Leone, though women are the greater number, they are often relegated to the private sphere and excluded from major political, socio-economic and cultural processes. Women have little or no access to education, employment, healthcare, and other basic amenities of life. Female survivors of forced marriage were particularly vulnerable because of the additional burden of stigmatization and ostracization they faced.[194] Survivors of forced marriages were left rootless in the society after the war. Their involvement with the rebels had tainted them with negative stereotypes that did not conform to the role expected of women in traditional Sierra Leonean society.

These negative patriarchal perceptions range from seeing the Bush wives: as too promiscuous, with loose morals or associated with the spread of AIDS, too rebellious, not feminine enough, tainted and acquired 'rebel behaviour'. The general view was that these characteristics made them aggressive and too difficult for marriage or made them not representative of the traditional role model as wives. To escape these public disparagements, many women decided to conceal their former associations with rebels to avoid being permanently ostracized from

[190] Ibid, para. 47.

[191] For example, the RUF rebels established 'internal rules' for activities in the camp: 'A rebel was expected to provide for his 'wives' and children during their captivity.... If a rebel reneged on his responsibility, then he could be put in a cell and beaten to death.' See HRW, n 163, 45.

[192] Ibid.; see also 3b (3) TRC Report, n 116, 199-200, 313.

[193] HRW, n 163, 44.

[194] See Valerie Oosterveld, 'Forced Marriage and the Special Court for Sierra Leone: Legal Advances and Conceptual Difficulties' (2011) 2 J. Int'l Human. Legal Stud. 127.

society and to settle in the respectable roles of wives and mothers when possible. It may be argued that women survivors actively contributed to their own marginalization to guarantee their survival in the dynamics of ordinary life. The return of the Bush wives to their abductor-husbands might have been a practical and empowering choice for many survivors. In many other cases, however, rather than being a choice, the return was, I argue, a 'patriarchal mandate' for all women who wished to be viewed as respectable.

2.6. The Nature of Continuing Forced Marriages

According to the findings of the AFRC Appeals Chamber which were followed by the ICC Chamber and the ECCC with little or no variation,[195] the harms suffered by the Bush wives qualify as forced marriage, a crime against humanity. However, it has not yet been determined whether the harms suffered by the Bush wives after the war are of similar gravity to qualify as forced marriages. It is also uncertain whether under customary law the returning Bush wives are recognized as wives or had acquired the rights and duties of a customary law wife.

Unlike during the war, the Bush wives in these new unions were not compelled by their abductor-husbands into the new conjugal associations. Rather, I will argue that they were compelled by circumstances: patriarchal norms and attitudes that rural women also face. It was difficult to determine if the unions resulted in 'great suffering or serious physical or mental injury.' None of the Bush wives interviewed or who was present at the online meeting admitted to any form of suffering. However, they are expected to perform conjugal duties like household chores, as this is the customary duty of wives in many patriarchal societies, such as Sierra Leone.[196] It could not also be ascertained from the study if they were forced to endure forced pregnancy, but it is unlikely to have occurred. For the African woman, bearing and raising children is a joy, especially if she is happily married. Nwapa observes that 'the desire to be pregnant, to procreate is an overpowering one in the life of the [African] woman. She is ready to do anything to have a child, be she single or married.'[197]

---

[195] See ECCC Decision (Judgment) 002/02, 002/19-09-2007/ECCC/TC (16 November 2018) para 3686-3694; *Prosecutor* v *Katanga* (Judgment Pursuant to Article 74 of the Statute) ICC-01/04-01/07 (7 March 2014) para 1000.

[196] Commenting on the 'Role of Gender and Stereotypes' in Burkina Faso, **CEDAW** listed cooking, childcare, washing, housecleaning, fetching water and firewood as domestic chores performed by women, see 'Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined Fourth and Fifth Periodic Reports of States Parties: Burkina Faso' (9 February 2004) UN Doc CEDAW /C/BFA/4-5; see also generally Medhanit A. Abebe, 'Climate Change, Gender Inequality and Migration in East Africa' (2014-2015) 4 Wash. J. Envtl. L. & Pol'y 104, 116, 117, 136.

[197] See Flora Nwapa, 'Women and Creative Writing in Africa' in T Olaniyan and A Quayson (eds), *African Literature: An Anthology of Criticism and Theory* (Blackwell Pub. 2011) 526, 531.

Unlike in situations of conflict-related forced marriages, they suffered no grievous penalties for failing to show their 'husbands' undivided love and loyalty. However, unlike husbands, it is a taboo for a married woman [or a woman in a marital-type relationship] to engage in extra-marital affairs. It is a ground for the husband to divorce his wife, but not for the wife. Living with a man, whether in a legally formalized relationship or not, is not comparable with life in the bush with the attendant high risk of being raped repeatedly. The risk of contracting Sexually Transmitted Diseases (STD) and of having miscarriages is also greatly mitigated by 'unrestricted access'[198] to medical facilities and legal protection against sexual violence.

Given some similarities between customary law marriages and the new unions entered by Bush wives after the war, it is important to identify the status and validity of the later. To determine whether the new unions fit into any existing category of customary marriage in Sierra Leone, in the following section, I will examine the different types of customary marriages and marital-type relationships in Sierra Leone. Significantly, this will uncover the characteristics of post-conflict forced marriages that replicate the lived experiences of rural Sierra Leone's women's subordinate position. It will also enable the unearthing of the presence of the elements that will prove the lack of consent of the survivors in their new conjugal relationships.

2.6.1. Valid or Void Marriage?

Sierra Leone recognises multiple marriage systems governed by different statutes. The **1960 Mohammedan Marriage Act** was enacted to regulate Muslim marriages, the **1960 Christian Marriage Act** regulates marriages of Christians, while the **1960 Civil Marriage Act** provides for civil marriages. Although, customary law has always been the law of the land, customary marriage was not recognized and had no legal standing under statutory law until 1965.[199] This was when the provisions of the **1965 Christian Marriage (Amendment) (No. 2) Act** made a prior customary union an impediment to a statutory marriage. Moreover, unlike the laws governing Christian and Islamic marriages, customary law is not codified. Excluding the recently enacted **2009 Registration of Customary**

[198] Compared to the situation in the bush during the war. The poor state of health facilities in Third World countries, such as Sierra Leone is common knowledge. See Josephine Appiah-Nyamekye-Sanny, 'Sierra Leoneans say Health Care Hard to Access, Beset with Corruption - Especially for the Poor' (Africa Portal 28 Feb 2020) <https://www.africaportal.org/publications/sierra-leoneans-say-health-care-hard-access-beset-corruption-especially-poor/ > accessed 7 July 2021.

[199] The non-recognition was based on the erroneous belief that Western marriage was superior to African marriage. For example, a despatch sent by the drafters of the Christian Marriage Act noted that: 'Nothing shall be done… to give the Natives grounds for thinking that their marriage and the white man's marriage are on a par.' Quoted in CO267/472/1904, Despatch No. 157; as cited in Barbara Harrell-Bond, '"Native" and "Non-Native" in Sierra Leone Law' West Africa Series (1977) XVIII (1) (Sierra Leone) 4.

Marriage and Divorce Act, customary law does not provide uniform rules or procedures governing marriage and divorce.

However, rural dwellers usually contract customary law marriages. Joko Smart identified eight types of customary-law marriages in Sierra Leone.[200] They are: marriage with marriage consideration and marriage by service (universal and the commonest types); marriage by gift, goat's head marriage *(Njewui*); widow inheritance;[201] marriage by showing oneself to a new father-in-law; friendship arrangement, which is a potentially valid marriage; and marriage by capture, which was a common feature of past inter-tribal wars. Of the eight, friendship arrangement is the type of 'marriage' that comes closest to the post-conflict unions 'Bush wives' entered with their ex-abductors.

2.6.2. Marriage or Friendship Arrangement?

A friendship arrangement is a form of cohabitation between a man and a woman in love who live together as husband and wife without the prior consent of the woman's family.[202] The only major difference here is that in case of the 'Bush wives' the couple may not be in love, since their living together is at best a matter of convenience or at worst a lack of choice on the part of the woman, and probably also the man. Such a union has a hybrid character.[203] The family of the woman does not regard such a union as a valid marriage until they give their consent. If the woman's family refuses to give their consent**,** the legal incidences of a valid marriage are missing from such an arrangement. For example, the woman's family cannot make claims which are incidental to marriage on the 'husband'.[204]

So, a continuing forced marriage, like a friendship arrangement, is not valid legally, but **is** a union that has the potential of being transformed into a valid customary-law marriage. It remains a mere social arrangement, devoid of any binding legal or social obligations, until the fulfilment of the essential requirements of a valid marriage.[205] Before 2009, the chances of a friendship arrangement being transformed into a valid marriage were slim, as a successful transformation was solely dependent on the man obtaining the woman's family's consent. With the enactment of the **2009 Registration of Customary Marriage**

[200] See Joko Smart, n 115, 24-29.
[201] 'Widow inheritance (also known as bride inheritance) is a cultural and social practice whereby a widow is required to marry a male relative of her late husband, often his brother. The practice is more commonly referred as a levirate marriage, examples of which can be found in ancient and biblical times.'
[202] Joko Smart, n 115, 28.
[203] Ibid.
[204] Ibid.
[205] Persons in many jurisdictions have relationships or unions outside the purview of the law. These are called variously irregular unions, or cohabiting relationships, or relationships in the shadow of the law, see Angel Ristov, 'The New Challenges in Regulation of Marriage and Non-Marital Union' (2014) Harmonius: Journal of Legal and Social Studies in South East Europe 300, 304; Katharine Cleland, *Irregular Unions: Clandestine Marriage in Early Modern English Literature* (Cornell UP 2021).

and Divorce Act, consent is no longer the sole preserve of the woman's family. According to its section 2(3):

> *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 may give his consent.*[206]

Based on the foregoing provision, parents or guardians who reject and ostracize daughters who were Bush wives and then refuse to consent to them marrying their former abductors, can, in my opinion, be deemed to have withheld consent unreasonably. The parties may approach a Magistrate or Local Government Chief Administrator for consent to marry. Moreover, without recourse to the relevant authorities, after five years, a friendship arrangement can be converted into a customary-law marriage, based on section 6 of the **2009 Registration of Customary Marriage and Divorce Act**. It provides that: Co-habiting persons whose personal law is customary law are deemed to be married if, they are not below eighteen years and have lived together as husband and wife for a continuous period of not less than five years. Section 1 of the Act defines cohabiting persons.[207] However, only persons whose personal law is customary law and who are not below eighteen years, however, can take advantage of this provision. Since many of the former 'Bush wives' are rural dwellers and should, given the length of the war, be above eighteen years of age, they would be covered by section 6 of the Act. The only drawback is if the parties have not lived together as husband and wife, continuously for a period of five years.

Being a friendship arrangement, a continuing forced marriage's potential of being transformed into a valid marriage is dependent on the woman's family's consent or after 2009, the consent of the Magistrate or Local Government Chief Administrator. Having established that like a customary law marriage the consent of a 'wife' of a continuing forced marriage may be irrelevant, I will investigate if the new relationships were coercive or consensual. This will help prove if the role of consent and coercion in their return to their abductors is different from the lived experiences of rural women of Sierra Leone.

2.7. Consent and Coercion in Continuing Forced Marriages

While the relationship between the Bush wives and their abductor husbands was held by the SCSL to be one of coercion, as genuine consent was impossible,[208] it

[206] No. 1, 2009.

[207] *'cohabiting persons' means persons who, while not married have lived as married persons for a period of not less than five years.*

[208] Kyra Sanin, 'Special Court Monitoring Program Update #57 Trial Chamber II - AFRC Trial 5 October 2005' (U.C. Berkeley War Crimes Studies Center, 2005) 2 <
https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ocf.berkeley.edu%2F~changmin%

is debatable if the same can be said of the new conjugal unions. For example, it is unclear whether 'protest' which was not a viable option during the war[209] was possible for female partners of the new unions, as occurs in customary law marriages. It is also difficult to determine if the usual mutual obligations to be expected in a marriage relationship are present. As the continuum of violence is difficult to see when armed conflicts cease,[210] it is not easy to determine whether the new relationships were coercive or consensual. Justice Doherty's view is that the victims' decision to stay on as 'wives', transformed the 'forced marriages' into consensual unions.[211]

Given the sexual slavery-like circumstances of the Bush wives, who could not escape during the war, Justice Doherty's view is contestable. Since they could freely leave after the war ended, their desire to stay or return to 'captivity' seems puzzling. One credible reason is that they were compelled to remain by circumstances beyond their control. These circumstances are not different from the lived experiences of rural women of Sierra Leone. The role of consent and coercion in their return to their abductors is therefore not different from the lived experiences of rural women of Sierra Leone, as analyzed in the following sections.

2.7.1. Meaning of Consent

The word 'consent' is derived from the Latin verb *consentire*, which means to share physically, emotionally or intellectually.[212] Consent is generally understood in law, and in ordinary language**,** as *'a sign of agreement, with its juridical exercise connoting voluntary participation of parties in a specific action and their assent to its legal effect.'*[213] The term 'consent' plays a key role in the formulation and application of laws of marriage in many jurisdictions. Consent is not the only requirement for a valid marriage, but my focus here is on its role and function in marriage. This is because in most jurisdictions, the absence of the consent of either one or both parties would invalidate a marriage and may transform a voidable marriage to a forced marriage.

2FSL-Reports%2F057.doc&wdOrigin=BROWSELINK > accessed 30 May 2022; in traditionally arranged marriages when the girl does not consent, she can protest by running away or persuade some family members to agree with her reasons for refusal of the arranged spouse.

[209] Ibid.

[210] Doris Buss, '"Foreword" in *Marriage by Force? Contestation Over Consent and Coercion in Africa* (Ohio UP 2016) ix.

[211] Justice Doherty's Partly Dissenting Opinion, n 160, para 45.

[212] Maria Drakopoulou, 'Feminism and Consent: a Genealogical Inquiry' in R. Hunter and S. Cowan (eds), *Choice and Consent: Feminist Engagements with Law and Subjectivity* (Routledge Cavendish 2007) 9, 13.

[213] Ibid, 14.

However, in Sierra Leone a customary law marriage is deemed valid in the absence of the female spouse's consent.[214] I will argue that the role of consent and coercion in the return of Bush wives to their abductors is not different from the lived experiences of rural women of Sierra Leone. This reflects the patriarchal nature of rural Sierra Leone and is in conflict with domestic laws and international instruments to which Sierra Leone is a party. This patriarchal attitude is due to the lack of respect for women's human rights in rural Sierra Leone, which is key to the harms women experienced before, during and after the war.

2.7.2. Concept of Consent in a Marriage Contract

In theory, choice implies a range of alternative options, and consent suggests a selection of an activity and the rejection of others. Generally, choice is exercised through the notion of individual autonomy, which is regarded as one of the features of a valid marriage and given legal expression through the doctrine of consent.[215] The basis of this is captured in the **1948 Universal Declaration of Human Rights**,[216] the first international human rights instrument. It states that 'Marriage shall be entered into only with the free and full consent of the intending spouses.'[217] The freedom of choice and the protection of individual rights, which the right to choose a spouse entail, exist in extant international instruments and domestic laws. This shows the centrality of consent to the institution of marriages.

The concept of choice and consent in marriage was seen as so important that it was articulated as the first article of the international agreement on women's rights in relation to marriage: the **1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages**[218] Its article one states that: *'No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person…'*[219] **CEDAW** replicates provisions on the right to marry in earlier human rights instruments: the **UDHR** and **ICPPR**.[220] **CEDAW**'s article 16 (1) (b) provides for freedom of choice and 'free and full consent' of the parties to marry. Article VI (a) of the **Maputo Protocol** also provides for the 'free and full consent' of parties to a marriage. It states: *'No marriage shall take place without the free and full consent of both parties.'*

In addition, the definition of forced marriage also reflects the significant role of consent and choice in the formation of a valid marriage. The UN Economic and

[214] See pp. 44-46 for details.
[215] Drakopoulou, n 212, 13-14.
[216] (adopted 10 December 1948) Res 217 A (III) (UNGA) [Hereinafter UDHR].
[217] Ibid. art. 16(2).
[218] (Adopted 7 November 1962, entered into force 9 December 1964).
[219] Ibid, art. 1 [Hereinafter 1962 Convention on Consent to Marriage]; principle 1, 1965 Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages has an identical provision.
[220] See **UDHR**, art. 16 (1) and **ICPPR,** art. 23 (2).

Social Council defines forced marriage as *'the case where the free and full consent of at least one of the parties to a marriage is lacking.'*[221] Other definitions closely follow the UN's definition: *a marriage conducted without the full and free consent of both parties*[222]; *a fundamental violation of an individual's human rights, namely the right to marry,* pursuant to **article** 12 of the **1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.**[223] These definitions are rather too brief to be of sufficient guidance in locating all the elements of forced marriage. The definitions imply but exclude a significant term, coercion, the presence of which vitiates consent.

By including the term 'coercion' other definitions offer a more comprehensive meaning of forced marriage. These include: a marriage that *'occurs where duress vitiates consent*[224] *or parties do not have the capacity to consent owing to mental illness or learning disability';*[225] and a marriage into which one party enters not only without her or his free and full consent but also as a result of force including coercion by threats or by other psychological means.[226]

Another comprehensive definition is that of forced marriage in armed conflict by the SCSL Appeal Chamber. It omits the word 'consent' but admits that coercive circumstances vitiate consent in marriage.[227] Another definition is that in the Sierra Leone's **2012 Sexual Offences Act**, which is an 'agreement by choice and with the freedom and capacity to make that choice.'[228] Although, not in the context of forced marriage, this definition adds an element that is not expressly stated, though implied from all the other definitions, that is, 'the capacity to choose'. The laws cited above demonstrate the close link between choice and the right to consent. The absence of valid consent would therefore invalidate a marriage, as happens when one or both parties are forced to marry. The law's

---

[221] UN, Economic and Social Council, *Report of the Secretary General [on] Forced Marriage of the Girl Child* (5 December 2007) UN Doc E/CN.6/2008/4, 3.
[222] See **UDHR**, art. 16(2); 1962 **Convention on Consent to Marriage**, art. 1; and **Maputo Protocol**, art. 6 (a).
[223] (Entry into force 3 September 1953), as amended by Protocols Nos. 11 and 14, ETS 5; see also Jacqueline Renton, 'Family: Age of Consent?' (2009) 159 NLJ 1347.
[224] The court in *Hirani* v *Hirani* [1983] 4 FLR 232, found 'duress' included pressure and not just physical force or threat.
[225] Catherine Shelley, 'Beating Children Is Wrong, Isn't It? Resolving Conflicts in the Encounter Between Religious Worldviews and Child Protection' (2013) 15 Ecc LJ 130, 134.
[226] Paraphrase of **1996 Family Law Act, s**s. 63A(4) and (6), inserted by section 1 of the **2007 Forced Marriage (Civil Protection) Act**.
[227] AFRC Appeal Chamber Judgment, n 176, paras. 196; the court defined forced marriage as: 'a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim.'
[228] Section 2.

insistence on consent suggests that the capacity to consent is the hallmark of the liberal legal subject.[229]

Given the experiences of the survivors, a selection of elements from the above definitions will advance my argument. From the above definitions, the elements of a forced marriage include the absence of 'full and free' or genuine consent of one or both parties, and the presence of force, threat of force, duress, or coercion. My argument is that the survivors of forced marriages did not in fact consent to the 'new' conjugal relationships that they seem to have 'voluntarily' entered. Thus, my definition of forced marriage is a marriage in which one or both parties lack the capacity to consent fully and freely owing to any reason, including force, threat of force, duress, or coercion. This will prove that owing to coercive circumstances, the survivors lacked the capacity to make the 'free' choice to return to their 'husbands'. The coercive circumstances are not different from the discriminatory patriarchal norms that ensure that rural women maintain subordinate roles in society.

2.8. Consent in Customary Law Marriages in Sierra Leone

Under customary law marriages parental consent is a requirement for a valid marriage between parties below the age of 18 years.[230] Customary law arranged marriages in which the consent of the bride was not necessary were common practices in rural areas and around the Freetown environs of Sierra Leone.[231] Mrs. Zainab Bangura and Dr. Dorte Thorsen, the two expert witnesses on marriages in Sierra Leone at the SCSL[232] admitted that this customary law practice was gradually dying out, especially in urban areas.[233] However, where such practices exist, parental consent, particularly the father's trumps the girl's consent, and she tends to be one of the last persons to know about her own marriage. Since her consent is irrelevant and subordinate to that of her parents, a potential bride may not be informed of her impending marriage until shortly before it occurs.

---

[229] Rosemary Hunter, 'Consent in Violent Relationships' in Rosemary Hunter and Sharon Cowan, (eds), *Choice and Consent: Feminist Engagements with Law and Subjectivity* (Routledge-Cavendish 2007) 158.

[230] See the **1960 Mohammedan Marriage Act** and the **2009 Registration of Customary Marriage and Divorce** Act, modified by several amendments, and provide for customary law marriages; section 2 (1), **2009 Registration of Customary Marriage and Divorce** Act states: 'Subject to this Act, a customary marriage, contracted after the coming into operation of this Act, shall be valid only if: (a) both spouses are not less than 18 years old and consent to the marriage.'

[231] Belair, n 171, 569; Ibrahim Jalloh, 'Analyzing Bush Wife Phenomenon at the Special Court Trials'3 < http://www.carl-sl.org/home/articles/92-ibrahim-jalloh?format=pdf > accessed 12 September 2016.

[232] Exhibit P-32, 'Expert Report on Phenomenon of 'Forced Marriages' in the Context of the Conflict in Sierra Leone and, more specifically, in the Context of the Trials against the RUF and AFRC Accused only', May 2005, prepared by Zainab Bangura and Christina T. Solomon and Dr. Dorte Thorsen: Exhibit D-38, 'Expertise on West Africa in Case before the Special Court for Sierra Leone', 26 July 2006; AFRC Trial Chamber Judgment, n 154, 586-587.

[233] Ibid*;* see also Charles Chernor Jalloh and Simon Meisenberg, *The Law Reports of the Special Court for Sierra Leone, Vol 1: Prosecutor v Brima, Kamara and Kanu (The AFRC Case)*' (Martinus Nijhoff 2012) 1744.

However, the practice is not universal as in some cultures a girl who does not agree to the choice of a spouse can refuse marriage.[234] Refusal to marry, however, does not grant her the freedom to marry without parental consent.

Thus, while an arranged marriage may be regarded as a form of forced marriage in most jurisdictions, in Sierra Leone parental consent validates such marriages, if a party is below 18 years. Since men below 18 years are often not ready to marry, the purpose of this patriarchal requirement is obviously meant to 'protect' girls. The customary requirement of parental consent codified in the **2009 Registration of Customary Marriage and Divorce Act**[235] is gross violation of the women's rights **in** Sierra Leone.

Consequently, recommendations of several Treaty bodies have noted with concern these discriminatory provisions on marriages and other matters hindering women's rights. These include the high prevalence of the 'harmful traditional practice' of early/ child marriage,[236] and forced marriage,[237] especially of girls,[238] especially in rural areas and the lack of sanctions upon those responsible.[239] Noting negative traditional practices, such as forced and early marriage, for example, the African Union's concluding observations and recommendations on Sierra Leone recommends the repeal of the provisions of the **2009 Registration of Customary Marriages and Divorce Act** which permit early marriage.[240] The Act which allows for marriage before 18 with the consent of a recognized authority, including a parent, conflicts with section 34 of the **Child Rights Act**, article 16(2) of **CEDAW** and article 6 of the **Maputo Protocol** that set the minimum age of marriage at 18 years. These patriarchal provision shows lack of respect for women's human rights in rural Sierra Leone, which is key to the harms women experienced before, during and after the war.

---

[234] Occurs among the Mende tribe where the husband is chosen for the girl in childhood, ibid.
[235] Section 2(2).
[236] CEDAW/C/SLE/CO/5, 2007, n 54, para. 36; UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sierra Leone (11 July 2011) UN Doc A/HRC/18/10, art. 10 [Hereinafter A/HRC/18/10, 2011].
[237] UN CRC, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding Observations, Sierra Leone (24 February 2000) UN Doc CRC/C/15/Add.116, paras. 24 & 25 [Hereinafter CRC/C/15/Add.116, 2000]; CRC/C/SLE/CO/2, 2008, n 50, para. 57; A/HRC/18/10, 2011, ibid, art. 80.20.
[238] See CRC/C/SLE/CO/3-5, 2016, n 50, para. 22(b).
[239] See CCPR/C/SLE/CO/1, 2014, n 56, para. 13.
[240] See African Union, 'Consideration of Reports Submitted by States Parties under Article 62 of the African Charter on Human and Peoples' Rights: Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the Republic of Sierra Leone on the Implementation of the African Charter on Human and Peoples Rights' (February 2016) para. 87 (xxxi) < https://www.maputoprotocol.up.ac.za/images/files/countries/concluding_observations/Sierra%20Leone.%2019th%20Extraordinary%20Session%20concluding%20observations.%20(%20Initial%20and%20Combined%20Reports,%201983-2013.pdf > accessed 21 August 2021.

The requirement of consent for a valid marriage suggests the ability of the consenting parties to protect and promote their own personal interests; but this is not so in practice. In Sierra Leone, a customary law wife for example, is neither in a position to protect nor promote her interests, given her subordinate position in her father's house. Her consent is not essential as no valid marriage takes place without the woman's family's consent.[241] As we have discussed, customary law marriage contracted without the consent of the wife's family is null and void.[242]

Although parental consent is a requirement for customary law marriage, an economically independent female may reject or turn her back on kinship ties and marry the man she chooses despite her family's refusal.[243] Since a girl's ability to marry without parental consent is dependent on her financial status, given the post-conflict impecunious state of Bush wives, none would have been able to marry without parental consent. The circumstances of the survivor bush wife are therefore far worse than that of a customary law wife, given her sexual slavery-like experiences during the war.

Based on the above arguments, one may conclude that under customary law, a woman is 'incapable' of protecting and promoting her own personal interests, in relation to her choice of a partner. This is mainly because the customary and statutory requirements of parental consent may make it impossible for her to genuinely consent to a marriage contract. An important factor that influences the formation of marriages is the traditional social position of women as mothers and wives, and of men as patriarchal fathers and providers for their families. A woman can therefore not be considered a rational, choosing person, capable of decision, or an autonomous individual. Like wives of customary marriages, the Bush wives were compelled to enter conjugal relationships with their ex-abductor husbands. The pressure was borne out of the economic need for a husband who in patriarchal societies provides for their families. This economic need is illustrated by an Igbo proverb: **'A woman does not know the value of her husband until she becomes a widow.'**[244] From the foregoing, the obvious conclusion would be that, like the rural women, the weaker traditional social position of women prevented the Bush wives from operating as free, autonomous, and rational individuals in any marriage contract.

The 'patriarchal structures' upon which women's subordination is founded in customary law marriages, are still firmly in place in today's rural Sierra Leone.

[241] Joko Smart, n 115, 22.
[242] Davies, n 128, 19.
[243] Coulter, n 124, 71.
[244] Charles Gyan et. al., 'Proverbs and Patriarchy: Analysis of Linguistic Prejudice and Representation of Women in Traditional Akan Communities of Ghana' (2020) 9(3) Soc. Sci. 1, 6.

In Sierra Leone, and many African states, for example, Pateman's 'Sexual Contract'[245] provides a useful tool for contemporary analysis, as women are still forced into the marriage contract for survival or even for social recognition. For example, as Coulter notes, marriage and parenthood is still, for the rural women of Sierra Leone, one of the most important trajectories of life.[246] A woman must be married and have children in order to be regarded as a real woman.[247] Since the belief is that only the husband's kin can bury the wife and not the wife's, it is difficult for a woman to remain unmarried. As 'there is no such thing as an unmarried woman'[248] the only option for rural women is marriage.

The returning Bush wives therefore had no choice but to 'marry' the only men willing to accept them, their ex-abductor husbands. Marriage to other men proved to be very difficult for the 'Bush wives' because the issue of premarital chastity is still rewarded and celebrated, as prestige and value attached to the virgin bride.[249] There is corresponding shame for the non-virgin bride, forcing them to stay in their fathers' compounds, in the absence of a viable option to make a living. Furthermore, many people were afraid of them, and their families were dismayed at their return. This was due to a widespread belief that any person who lives with a rebel leader for more than a day becomes tainted and acquires 'rebel behaviour'[250] The 'Bush wives' who were rejected, ostracized and unable to benefit from the post war free education programs for females, had to choose between prostitution and 'marriage' to their abductor-husbands.

'Forced' into a marriage contract for survival or for social recognition, the relationship between a rural woman and her customary law husband is not different than that between the Bush wives and their partners. This is because wives have always represented access to unpaid work;[251] one of Walby's six key structures of patriarchy.[252] The bride wealth paid by the husband is considered an

[245] Pateman, n 65, see 'Chapter 6: Feminism and the Marriage Contract.'
[246] Coulter, n 124, 76.
[247] Ibid, 73.
[248] Ibid 74.
[249] For instance, writing about the Yoruba of Nigeria (West Africa) Eades states that while virginity is less important today, it still constitutes an ideal from the male point of view. See Jerry Eades, The Yoruba Today (CUP 1980) 57; the situation is not different in Sierra Leone. *'…the Limba of Sierra Leone place such a premium on female virginity that at … a virgin at marriage is still considered the ideal'*, see Mercy Amba Oduyoye and Musimbi R. A. Kanyoro, *The Will to Arise: Women, Tradition, and the Church in Africa* (Wipf & Stock Pub. 2005)149, 150, 157.
[250] Coulter, n 124, 586.
[251] Paul Richards, 'To Fight or to Farm? Agrarian Dimensions of the Mano River Conflicts (Liberia and Sierra Leone)' (2005) 104 African Affairs 571, 582; Almudena Sevilla-Sanz, Jose Ignacio Gimenez-Nadal, and Cristina Fernández, 'Gender Roles and the Division of Unpaid Work in Spanish Households' (2010) 16(4) Feminist Economics 137; Caroline Bledsoe, *Women and Marriage in Kpelle Society* (Stanford UP, 1980) 50, 112.
[252] Walby, n 62, 20.

exchange for the woman's reproductive and productive labour,[253] another patriarchal element that leads to women's subordination. Its acceptance by the girls' father or guardian, represents a seal on the transfer of rights and obligations from the bride's father or guardian to the husband.[254] As the husband's property, he acquires certain rights over her with respect to domestic services: labor first, the income from that labor, children, and sexual services after marriage.[255] A husband can therefore successfully plead his wife's persistent adultery, laziness in performing household chores, including refusal to cook and work on the farm, as a ground for divorce.[256] Although there was no payment of bride wealth, it is unlikely that the conjugal duties of a Bush wife in a post-conflict marriage would be different from that of the wife of a customary law marriage.

The subordinate position women have always occupied in all societies, for example, prevents them from protecting and promoting their own personal interests. This is mainly because their unequal bargaining power is derived from their unequal economic standing. One area in which women are most disadvantaged is marriage, and in particular customary law marriage. This is because, as it has been discussed, they hardly enter marriage contracts voluntarily. In such marriages, the wife is the weaker party, and being vulnerable, is unable to protect her interests. In general, women, and in particular rural women, hardly act as autonomous individuals when entering a contract of marriage, as there is usually an element of force or coercion involved.

2.9. Choice Between Bad and Worse: Consent or Coercion?

Consent is said to be legally transformative, that is, it is verbal act with legal repercussions. Coercion undermines the validity of this verbal act. In the context of marriage, coercion invalidates an otherwise valid union. Coercion is widely understood to undermine individual freedom of persons who are coerced into entering a marriage. However, the mere existence of external pressure or influence does not establish coercion if it is not the kind or amount that reduces free choice.

While coercion was clearly involved in situations of conflict-related forced marriages, it is not apparent in the case of the post-conflict conjugal unions. The victims in the former situation were forced *'...into the appearance, the veneer of a*

[253] Coulter, n 124, 75; Lucia Corno and Alessandra Voena, 'Selling Daughters: Age of Marriage, Income Shocks and the Bride Price Tradition' (2016) No. W16/08. IFS Working Papers, 3.
[254] Vernon R. Dorjahn, 'The Marital Game, Divorce, and Divorce Frequency among the Temne of Sierra Leone' (1990) 63 (4) Anthropological Quarterly 169, 170
[255] Vernon R. Dorjahn, 'Changes in Temne Polygyny' (1988) 27 *Ethnology* 367, 372.
[256] Lisk and Williams, n 119, 664.

conduct (i.e., marriage), by threat, physical assault or other coercion,'[257] which resulted in *'…severe suffering, or physical, mental or psychological injury to the victim[s].'*[258] The same cannot be said of the survivors who appear to have voluntarily remained or returned to their abductor-husbands. As Steinbock argues, it is not always clear whether a given [situation][259] is coercive or not because the concept is 'complex, controversial and often difficult to apply.'[260] For example, it is debatable whether the Bush wives who continued or returned to their 'husbands' were acting voluntarily and of their own free will or not.

Based on Steinbock's writings, the thesis will rely on Alan Wertheimer's general theory of coercion to help decide[261] and because in the AFRC case and several other forced marriage cases, the courts relied upon Alan Wertheimer's 'choice-prong' test for coercion.[262] Alan Wertheimer proposes two independent tests for coercion or duress, 'each of which is necessary and which together are jointly sufficient…'[263] Both tests cover the two principal views that have emerged in philosophical literature on the question of what is coercion: the moralized view or proposal prong and the choice prong or empirical view.[264] In the choice prong view, A's proposal is coercive only if B has no *reasonable alternative* but to choose A's proposal. According to this view, B is coerced if she is under significant psychological duress, or is incapable of resisting A, and rests on the question of whether B is compelled to act against her will by A.[265] In theory, B has a choice, but the choice is between two 'unpalatable alternatives.'[266]

In the case of the Bush wives, they were presented with two unpalatable alternatives: a life of social rejection, ostracization, humiliation and poverty, or conjugal union with a man who had in the past caused her severe harm: serious suffering, including physical, mental and/or psychological injury. During the war they were forced to 'marry' because refusal resulted in grave consequences, such as grievous bodily harm or even death. Admittedly, after the war some chose to stay, or returned to these husbands, but the fact that they prefer one alternative to

---

[257] *Prosecutor* v. *Brima & Ors* (Public: Appeal Brief of the Prosecution) SCSL-04-16-A, (13 September 2007) para. 614 < https://www.rscsl.org/Documents/Decisions/AFRC/Appeal/675/SCSL-04-16-A-648.pdf > accessed 12 July 2023.
[258] AFRC Appeal Chamber J, n 176, para. 196.
[259] The word 'situation' has been substituted for 'policy and programme' used by Steinbock, see Bonnie Steinbock, 'Coercion and Long-Term Contraceptives' Hastings Center Report (1995) 25 (1) S19.
[260] Ibid.
[261] Ibid.
[262] Alan Wertheimer, *Coercion* (Princeton UP 1987) 168-169; Gill and Anitha observed that UK courts focused on the choice prong test before forced marriage was criminalized, see Aisha K Gill and Sundari Anitha (eds.), Forced Marriage: Introducing a Social Justice and Human Rights Perspective (Zed Bks 2011) 165; see n 257.
[263] Steinbock, n 259.
[264] Denis G. Arnold, 'Coercion and Moral Responsibility' (2001) 38 Am.Phil.Q. 53, 53-54.
[265] Ibid 53, 54.
[266] Wertheimer, n 262.

the other does not prevent the conduct from being coercive. What makes both situations coercive is that the women reasonably saw themselves as having no choice. Having had children with such 'husbands' some Bush wives felt that they had no other choices. Completely overborne, worn down by the family and communities' negative reactions they felt compelled to return because of the absence of better alternatives.

Furthermore, the DDR and various other development initiatives which provided training and skills necessary for reintegration focused on young, male ex-combatants.[267] Unlike the young men who received training, skills or education, women were usually only eligible for micro-loans from NGOs.[268] Fulfilling the conditions for obtaining a micro-loan would have been very difficult, if not impossible for Bush wives. Finding reintegration very difficult, the only option for some was to return to, or to remain with their ex-husbands, to continue a life of unrecognized, unpaid, exploitative labour, akin to slavery, as well as sexual slavery.

So, while it may appear that some of these Bush wives consented to these unions, based on Alan Wertheimer's test, I will argue that the unions were coercive because they had no reasonable alternatives, and they had to choose between two unpalatable alternatives. This situation is like that of a girl who is compelled to marry the man who raped her. She must choose between two unpalatable alternatives: marrying the man who raped her and caused her physical and mental harm or remaining unmarried in her father's house. Furthermore, the choice Bush wives made is complicated by the loss of certain benefits that accrues to legally married wives.

2.9.1. Loss of Customary Benefits

A bush wife who returns to her husband loses several customary benefits, if the union is not formalized, as she is not considered legally married to the man. For example, under customary law a husband is obliged to provide food, clothing, and shelter for his wife.[269] Failure to fulfil *'...these duties to wives and dependents implies failing as a man.'* It is doubtful whether such an obligation is binding on the man in the case of informal unions. While it may be argued that the children of the union, for whom he is legally responsible, are the man's dependents, the same

[267] Mariam Denov, *Child Soldiers: Sierra Leone's Revolutionary United Front*. (Cambridge UP 2010) 161-163; Mariam Denov and Richards Maclure, 'I Didn't Want to Die so I Joined them: Structuration and the Process of Becoming Boy Soldiers in Sierra Leone' (2007) 18 Terrorism and Political Violence 119; James Okolie-Osemene, 'Sierra Leone: Mapping the Disarmament, Demobilisation, Remobilisation and Reintegration of Ex-Combatants. Prospects for Sustainable Peace' (2021) 34 Peace Conflict Studies Quarterly 20, 38; 3b (3) TRC Report, n 116, para. 215.

[268] Rebecca Franssen, *Peace and Unquiet: the Failure of Transitional Justice Mechanisms in Sierra Leone* (DPhil King's College London 2015) 157.

[269] Coulter, n 124, 79; Bledsoe, n 251, 50-51 on economic provisions, 94, 95, 109-110.

cannot be said of the returning bush wife. Such a woman depends on the good will of the man for her basic provisions; a situation that reduces her to a beggarly status, especially since he is not obliged to maintain her. Compared with women in valid marriage relationships, women in continuing marriages thus face an increased risk of poverty. Meanwhile their male partners can choose to escape the usual responsibilities of marriage and fatherhood.

Having been rejected by families and communities, returnee bush wives bore the brunt of such harms alone in a collectivist culture that places great emphasis on the extended family. A bush wife in a continuing forced marriage is akin to a girl who marries without parental consent or approval. Parental involvement, and in particular the approval of the family of the bride is crucial to a valid customary marriage.[270] A bush wife's return to the bush husband against her parents' wishes may lead to the severance of her natal ties. Although in principle, a wife belongs to the husband and his kin, in practice she still maintains close ties with her family.[271]

Thus, a continuing forced marriage deprives a returnee bush wife of the benefits of being part of her family. She is deprived of the usual material and emotional ties and the attendant strong sense of belonging to one's family. Moreover, her children are cut off from the benefits of the kinship networks. This is because the arrangement of customary marriage is closely tied to kinship networks, with distinct political and economic advantages. Obligations as well as rights are closely linked to family membership throughout life. The obligation to assist is balanced by the entitlements to receive various kinds of assistance from other family members.

In addition, the important quasi-judicial role kin groups play in hearing and settling disputes before being referred to a neutral third party is not available to ostracized family members. She has no recourse to the usual parental intervention in the event of any marital strife. She alone bears the burdens of a bad marriage. Leach states that:

> *a woman usually sustains strong links with her natal family, both as a source of personal support in the short term, to ensure support if her marriage flounders, and to assure her rights to land and residence if she later returns to live there, perhaps on widowhood.*[272]

---

[270] The families and seniors of the prospective bride and groom are greatly involved in traditional marriages, and in particular the approval of the family of the bride is paramount.

[271] Coulter, n 124, 80.

[272] Melissa Leach, *Rainforest Relations: Gender and Resource Use among the Mende of Gola, Sierra Leone* (Edinburgh UP 1994) 187.

Loss of links with, and the support of her natal family can impact negatively on women's lives, especially in a country with limited or no social services. For example, short term support involves spending time with the family on the gestation and birth of the woman's first child.[273] In the absence of health facilities, the information from older women in the family, many times dismissed as old wife's tales, may arguably be the only significant care a young mother and her new baby receives in the first years of life.

More importantly, there is no guarantee of a bush wife enjoying her customary rights to land and residence in her natal family if she leaves her 'husband'. So, while a customary law wife who leaves her husband is likely to receive such long-term support from her natal her family, a returnee bush wife in a similar situation may end up on the streets. The only benefit of such a union is that no bride wealth is repayable to the man's family on separation. For a rural woman, in the absence of better alternatives, to turn her back on such long-term support, is a life changing decision that she may not have taken lightly.

Furthermore, being a predominantly patrilineal society inheritance laws in rural Sierra Leone discriminate against females, with a few exceptions. Such exceptions include the coastal Sherbros, where the women play active roles as heads of households, village chiefs, or even lineage heads, and can become beneficiaries of inherited property.[274] So, depending on her ethnic origin, the decision to return to her 'husband' may cost a bush wife and her children their inheritance, especially under customary law. The situation is, however, slightly different under general law.

2.9.2. Loss of Statutory Benefits

Continuing forced marriage is an example of a cohabiting union, which is outside the purview of the law. By virtue of the **2009 Registration of Customary Marriage and Divorce Act**, such unions can be converted to a regular union or valid marriage after 5 years, as discussed above. The effect of the law on the status of bush wives is that since conversion is dependent on the consent of both parties, the women's position is precarious. The validity of the marital status of such unions is uncertain and dependent on the goodwill of both partners. Given that the woman is often the loser in such situations, her status, safety, and value is risky. The 'unlawful' conjugal unions and the harsh consequences the female partners and their children may endure can be traced to entrenched patriarchal attitudes and culture. General law therefore does not provide a better safety net for bush wives, when compared to customary law.

---

[273] Coulter, n 124, 80.

[274] Carol MacCormack, 'Mende and Sherbro Women in High Office' (1972) 6 Can.J.Afr.Stud. 151, 154.

The **2007 Devolution of Estates Act** provides for the inheritance rights of *'surviving spouses, children, parents, relatives and other dependants [sic] of testate and intestate persons…'* It applies to and differentiates between persons married under the **1960 Civil Marriage Act**, the **1960 Christian Marriage Act**, the **1960 Mohammedan Marriage Act** or any customary law and persons who are not. Under the Act, a person married under these laws is a 'spouse,' while those whose 'marriages' fall outside these laws are termed 'cohabiting persons.'[275] While a spouse has inheritance rights, a cohabiting person's inheritance rights depends on continuous cohabitation 'with the testator or intestator for a period of not less than five years immediately preceding the death of that person.'[276]

Bush wives whose marriages have not been formalized fall into the latter category, as their marital status is not recognized so long as the union is less than five years old. The implication is that for the first five years of the union, the law regards such a bush wife as *'an unmarried woman who has cohabited with an unmarried man as if she were in law his wife…'* The phrase *'…as if she were in law his wife…'* is ambiguous and subject to diverse interpretations. The phrase may or may not mean a common law marriage. Common law marriage is recognized in Sierra Leone based on the adoption of English law into its legal system.[277]

Generally, to qualify as a common law marriage, a continuing forced marriage must fulfil certain requirements. The two essential elements of a common law marriage are cohabitation and 'holding out.' 'Holding out' means public appearance as a married couple. For example, the woman assuming her husband's last name or the couple filing a joint tax return are actions that tell the world they are husband and wife. Since such public actions are unlikely to be undertaken by rural women in a continuing marriage, a simple statement, signed and dated, stating they intend to be married can prevent future burdens and offer protection should the need arise.[278] For illiterate women, this may not be feasible. However, local women's groups and other NGOs could help secure for women, and for bush wives trapped in continuing forced marriages, the full protection and societal recognition of common law marriage.

Without the requisites for a common law marriage being established, the bush wife is considered a non-legal spouse, and will not receive the financial benefits

[275] **2009 Registration of Customary Marriage and Divorce Ac**t, s. 2; see n 207 for definition of 'cohabiting persons.'
[276] Section 2.
[277] Like many other British colonies, Sierra Leone incorporated English law into its legal system by means of, *inter alia*, the direct application of common law in force on 1 January 1880; and under the 1991 **Constitution of Sierra Leone**, Act No. 6, 1991, section 170 (1) (e) domestic law comprises common law. [Hereinafter 1991 Constitution].
[278] See Harry D. Krause, 'Legal Position: Unmarried Couples' (1986) 34 Am. J. Comp. L. Supp. 533, 546.

afforded legally recognized spouses. For example, they may be unable to collect any survivors' benefits or damages for a wrongful death action, or the like, at the death of the partner, or the termination of the relationship. It is unclear whether the status of a cohabitee in Sierra Leone is for inheritance purposes only,[279] or it can be transformed into that of a wife after five years for other purposes, or she remains, in the eyes of the law, an unmarried woman. Moreover, to qualify the partner of the woman must be an unmarried man. Women who are therefore 'unfortunate' to have been abducted by married men, and who are second or third wives, or even the only wives[280] may not be entitled to their deceased partners' property, even after cohabitating for over five years. On paper, the **2007 Devolution of Estates Act** discriminates against both unmarried women and men, but in practice more women than men are likely to be affected because of their lower economic status.

2.10. Conclusion

Applying the literature on customary law on the Sierra Leone situation, this chapter attempted to prove that the experiences of the Bush wives during their original forced marriage and the role of consent and coercion in their return to their abductors are not different from the lived experiences of the rural women of Sierra Leone. The socio-cultural coordinates of the lived experiences of the rural women were, apart from a few exceptions, replicated and inextricably linked to the harms the Bush wives experienced during and after the war. I have also proved that the Bush wives' post-conflict conjugal union with their ex-abductor husbands were not consensual. As survivors of forced marriages, they were left drifting in society after the war. Their involvement with the rebels had tainted them with negative stereotypes that did not conform to the role expected of women in traditional Sierra Leonean society. The negative patriarchal perceptions vary from seeing the women survivors as too promiscuous; with loose morals or associated with the spread of AIDS; to being seen as too rebellious; not feminine enough; aggressive; and too difficult for marriage; or not representative of the traditional role model as wives.

To escape public censures, many women decided to conceal their former associations with rebels to avoid being permanently ostracized from society and to settle in the respectable roles of wives and mothers when possible. It could be argued that women survivors actively contributed to their own marginalization to guarantee their survival in the dynamics of ordinary life. Their return to ex-abductor-husbands might appear to be a practical and empowering choice for

[279] In New Hampshire, United States, a common law marriage is recognized for inheritance purposes only, see *In the Matter of Tami Mallet and Michael Mallett* 37 A.3d 333 (2012) (SC).
[280] The first wife may have been missing, separated, or divorced, or even dead.

many Bush wives. In many other cases, however, the return was not an option but a mandate for all who desire to be seen as respectable women.

The stigma, isolation and ostracization and sometimes death threats they faced on their return home, and being chased away from home, were some of the coercive circumstances that informed their return. Completely overborne, worn down by the family and communities' negative acts**,** they felt compelled to return to their ex-abductor husbands, because of the absence of better alternatives. Other factors include poverty, little or no education, and lack of employable skills. I have attempted to prove that the Bush wives did not exercise agency but cohabited with their ex-abductors due to coercive circumstances**:** they lacked the capacity and ability to make autonomous choices and decisions in respect of the unions.

Furthermore, despite statutory intervention, in the absence of parental consent, such unions are void under Sierra Leone customary law. Even though marriage is a traditional site of patriarchal oppression, the norms governing customary marriages confer certain benefits that are not available to wives in continuing forced marriages. These benefits include fallback positions which help to ameliorate the oppressive practices that calcify women's low-ranking positions in patriarchal societies.

3. Chapter Three: The Legal Framework - Domestic Law (Including Customary Law) and International Law

3.1. Introduction

The main argument of this chapter is that domestic and international regulatory frameworks promoted sexual violence, did not ameliorate but contributed to the harms women experienced during and after the war. I will base my argument on the Hague Principles on Sexual Violence which has a list of illustrative but non-exhaustive acts of omission by states and other entities which may be perceived as sexual violence.[281] My choice of the Hague Principles is because of its importance in the literature of gender-based sexual violence, as it comprises the voices of more than 500 survivors 'on what they think makes violence 'sexual'. This information was complemented by input from civil society organizations, expert practitioners, and academics from around the world.[282] The list of omissions includes the failure of national authorities to:

- protect people from sexual violence;
- hold perpetrators of sexual violence to account under national law or refer the matter to a competent court; and/or
- guarantee remedies and assistance to survivors; and
- adopt discriminatory laws fostering or allowing impunity for the perpetrator, including through law sentences, or allowing a perpetrator to escape justice through marriage to their victim.[283]

The first omission, failure to protect people from sexual violence during conflicts, will be discussed in relation to international authorities, as the nature of internal conflicts greatly diminishes the capacity of states to protect their citizens from sexual violence. The war in Sierra Leone was so brutal that the government could not offer any meaningful protection to the female victims of sexual violence. After, the war however, the state bears the responsibility of protecting potential victims from sexual violence. This and the last three omissions will be analysed in relation to how the domestic regulatory framework failed to protect the Bush wives against post-conflict sexual violence.

Although the Hague Principles had not been published at the time, the recommendations made by the SL TRC in 2004 are similar to most of the

[281] As indicated by survivors, practitioners, and global civil society, the Hague Principles comprises provides general guidance on what makes violence 'sexual', especially to survivors, see n 103.
[282] Ibid.
[283] Ibid, 19.

omissions. The SL TRC recommended, *inter alia*, that as a matter of priority the government should:

• domesticate and incorporate the Rome Statute of the International Criminal Court into Sierra Leone's legal and judicial system;

• establish the Special Fund for War Victims;

• ensure that survivors of sexual violence from the conflict receive timely and full reparations; and

• stop violence against women and gender discrimination.[284]

Sexual violence is one of the harms the Bush wives experienced during and after the war in Sierra Leone. The concept of 'sexual violence' covers all violations of sexual autonomy and sexual integrity and it is often characterized by humiliation, domination, and destruction.[285] Although sexual violence is recognized as a threat to peace,[286] there is no universal acceptance of what experience of harm or violence can be termed sexual, when used as a tactic of war.[287] The lack of agreement, 'is due to the widely varying modes of sexual expression, identities, norms, and perceptions among various nations, regions, cultures, communities, and individuals.'[288]

The terms 'sexual exploitation', 'sexual manner', 'sexual assault' and 'sexual abuse' have also been used when describing acts of sexual violence. Sexual violence is not defined in the relevant Sierra Leonean laws, but 'sexual manner' is used in the **2012 Sexual Offences Act** to mean an act or conduct done sexually, if a reasonable person would consider it so, '…. because of its nature sexual or because of its nature it may be sexual and because of its circumstances…'[289] In this thesis, I will use the term 'sexual violence' broadly to include rape, which is the most specific of the term, and forced marriage.

The word 'harm' refers to women's lived experiences of political violence, as well as physical, mental, and social deprivations of subsistence needs[290] occurring either during conflicts or in repressive regimes. Law plays a critical role in

---

[284] See *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, vol. 2 (Chapters 3 & 4: Recommendations & Reparations) (Graphic Packaging Ltd. GCGL 2004) 2, 21, 138, 171, 172, 174, 213, 255-258.
[285] The Hague Principles, n 103, 11.
[286] See UNSC Res 1820, n 135, para 1.
[287] The Hague Principles, n 103, 11.
[288] Ibid.
[289] Section 1.
[290] Diana Sankey, 'Gendered Experiences of Subsistence Harms: a Possible Contribution to Feminist Discourse on Gendered Harm?' (2014) 24 (1) Social & Legal Studies 25.

shaping the social understanding of harm,[291] and the legal capture[292] of harms has evolved gradually.[293] However, feminist scholars have long recognized law's limited capacity to fully capture the scale and depth of harms women experience at such times.[294] Just like the sexual violence experienced by women during armed conflicts, the group nature of the harms of a continuing forced marriage is not captured by law and legal mechanisms. That is, there are differences in 'the way women experience harm, and the way law recognizes or affirms the experience and offers sanction or remedy in response'.[295]

During conflicts, the scale and severity of harms women experience vary, but priority is given to the 'most serious' harms in transitional justice. The 'most serious' harms, a term of international human rights law origin, constitute a small but significant category of human rights violations. They are recognized as offences under international criminal law, and war crimes and crimes against humanity under international humanitarian law.

In setting the normative framework for the domestic processes of transitional justice, international law has defined the 'acceptable' categories of harms. Set up to deal with the aftermath of a male-defined political violence, transitional justice has no space for private harms women experience in homes, such as rape, sexual abuse, forced marriage and domestic violence. This patriarchal attitude only serves to entrench the subordinate role of women in society, exacerbates the existing injustices of omission of private harms from transitional justice mechanisms, and creates a climate of impunity.

Furthermore, the definition of transition does not reflect private harms, as it is based on the violence perpetrated by both state and non-state armed groups.[296] So, ending the public harms of the 'primary' conflict is given priority.[297] The emphasis on public harms renders private harms that occur in homes and communities invisible and unaddressed by the usual legal norms and institutions introduced during transitions.[298] Sexual violence, such as rape and forced

[291] See Joanne Conaghan, 'Gendered Harms and the Law of Tort: Remedying (Sexual) Harassment' (1996) 16 (3) OJLS 407, 410.
[292] See Fionnuala Ní Aoláin, 'Exploring a Feminist Theory of Harm in the Context of Conflicted and Post Conflict Societies' (2009) 35 (1) Queen's Law Journal 219 for details of legal capture of gendered harms.
[293] The sole recognition of rape as physical harm women experience during conflicts by international humanitarian law and international criminal law, has expanded over time to include sexual slavery, enforced prostitution, pregnancy and sterilization, and other forms of sexual violence, codified as war crimes and crimes against humanity by the Rome Statute; and forced marriage recognized as a crime against humanity by the Special Court for Sierra Leone.
[294] Ní Aoláin, n 292, 220; Sankey, n 290, 35, 36.
[295] Ní Aoláin, ibid, 231-239.
[296] See Catherine O'Rourke, *Gender Politics in Transitional Justice* (Routledge 2013) 25.
[297] Bell and O'Rourke, n 126.
[298] O'Rourke, n 296.

marriage that occur during conflicts fall within the remit of transitional justice, but not rape and continuing forced marriage occurring after cessation of conflicts.

These contradictions show the gendered public/private divide of transitional justice processes. To O'Rourke the narrow range of harms recognized and addressed by transitional justice is a regression of feminists' gains in human rights. This is because multiple gender-specific harms experienced by women either remain in or are returned to the private sphere.[299] The exclusion of these gender-specific harms from the public sphere is based on the patriarchal notion that a woman's place is in the home. Thus, whatever happens to her in the privacy of her home is outside the remit of transitional justice mechanisms.

As Ní Aoláin aptly observed, 'the classification of what constitutes 'harm' for legal purposes is innately linked to the practical experience of justice…'[300] Consequently, classified as private harms, violence against women continues in homes and communities with impunity.[301] The impact of such narrow classification is denial of justice for most female victims, including the Bush wives. Moreover, as West noted**,** greater emphasis is placed on the role of law as an instrument for the redress of harm rather than in addressing the more fundamental issue of the nature of harm and the identification and recognition of its manifestations.[302] Perhaps a scientific knowledge[303] on the ways in which women [and not men] experience and process harms would result in a broader classification of harms, and ultimately in the advancement of gender justice. This, however, is beyond the scope of this thesis.

Furthermore, the specific measures taken by the State to implement the recommendations of the SL TRC for the rehabilitation and social reintegration of women and girls who were victims of the war were considered grossly inadequate. My analysis attempts to show how despite concerns expressed about women's human rights; extant domestic and international legal provisions and policies contravene core international human rights principles and encourage discriminatory patriarchal practices against the Bush wives. It will also show how

---

[299] Ibid.
[300] Ní Aoláin, n 292, 221.
[301] Rashida Manjoo, 'Accountability and Impunity: Developments and Challenges in Realizing Justice for Women Victims of Violence' (2020) 2(2) International Review of Contemporary Law 5, 6.
[302] Robin West, *Caring for Justice* (New York UP 1997) 94ff.
[303] A review of psychological and psychoanalytical literature would lead to a better understanding, identification and recognition of harms women experience; see for example, Alice H Eagly, *et al*. 'Feminism and Psychology: Analysis of a Half-century of Research on Women and Gender.' (2012) 67(3) American Psychologist 211; Hilary M Lips, *A New Psychology of Women: Gender, Culture, and Ethnicity* (Waveland Press 2016); Eleanor Schuker and Nadine A. Levinson (eds), *Female Psychology: An Annotated Psychoanalytic Bibliography* (Routledge 2017).

the lack of respect for women's human rights in rural Sierra Leone, is key to the harms women experienced before, during and after the war.

My aim is to prove that international and domestic legal responses to the Bush wives' experiences encouraged sexual violence as it affirmed the subordinate role of women in rural Sierra Leone, as discussed in academic literature. These responses negatively impacted the lives and outcomes of the Bush wives. In this chapter, I will analyse how both international and domestic legal frameworks, including customary law, interact and apply to the issue of Bush wives. It attempts an inquire into how the different regulatory frameworks contribute to, or ameliorate the harm(s) the Bush wives suffer post conflict. I will argue that by paying inadequate attention to the private harm of continuing forced marriages, the different regulatory frameworks encouraged sexual violence and failed to do them justice. Rectifying justice means punishing wrongdoers and caring for the victims of unjust treatment.

3.2. Bush Wives' Experiences of Private Harms: Sierra Leone's Response.

Like most sub-Saharan African countries, Sierra Leone operates a pluralistic legal system, and is bound by domestic constitutional law, statutory law, and common law, as well as international and regional human rights treaties.[304] In Sierra Leone, forced marriage[305] falls into a special category of harms: a 'public' harm in conflict that 'transformed' into a 'private' harm after cessation of the war. Forced marriages in Sierra Leone can be said to fall into the category of 'harms of inhibited status'[306] because of the lower gender status and low economic status of the victims.

For example, as will be discussed in a subsequent chapter, male ex-combatants who had committed brutal and vicious crimes but had access to resources were directly and indirectly exonerated, while the impecunious Bush wives who returned home, some with children born to the rebel soldiers were chased away.[307] These patriarchal acts exposed the Bush wives to harms that could have been avoided had they been allowed to remain with their families or stay in their communities. As Sankey argues, the concept of subsistence harms, comprising interrelated physical, mental, and social harms of deprivations of subsistence

[304] **1991 Constitution**, s. 170 (1) & (2) and s. 40 (2).
[305] Mrs. Bangura described 'forced marriage' in the context of the Sierra Leonean conflict and more specially, in the context of the trials against the RUF and AFRC as the physical abduction of a girl or woman by a rebel soldier, usually during an attack, where the man claims the girl or woman by saying, "yu na' mi wef", see Exhibit P 32, Mrs. Zainab Bangura's Expert Report, n 232; see also Sanin, n 208, 2.
[306] Ibid.
[307] See pp. 92-93 & Chapter 6.

needs, are marginalized gendered experiences of forced displacement and attacks on homes, livelihoods, and basic resources.[308]

I argue that Sierra Leone did not adequately address the rights of Bush wives. Contrary to its obligations as State party to several regional and international standards on women's human rights and relevant domestic laws, and constitutional commitments, Sierra Leone failed in many instances to respect, protect, and promote their human rights. This is also despite common knowledge of the heinous atrocities inflicted on girls and women during the war and the negative reactions of families and communities on their return home.

Based on the Hague Principles, the following women human rights will be analyzed: protection from sexual violence; access to justice, (which means holding perpetrators of sexual violence, including forced marriage, to account or referring the matter to a competent court[309] as well as guarantee of remedies and assistance to survivors); freedom from discrimination (amendment or repeal of discriminatory laws that promote impunity for the perpetrator, 'including through law sentences or allowing a perpetrator to escape justice through marriage to their victim').

3.2.1. Protection from Sexual Violence

Protecting women from sexual violence has been central to feminist debates. The radical–liberal feminist perspective on rape is that sexual violence is a means of social domination over women, and not merely for sexual gratification but is a violent rather than a sexual act.[310] In her seminal book on rape, Brownmiller suggests that rape was about power and a form of male domination over women; and argues that rape is a result of a male supremacy and patriarchy, and, therefore, social and political.[311] This social domination occurs because the continual threat of sexual violence perpetuates continual fear in women.[312] Feminists identify sexual violence as a form of oppression that men exercise over women at home and in the society. In patriarchal societies, such as Sierra Leone, men are perpetrators, bystanders, advocates, and the uninformed public that upholds the [sexual violence] rape culture, for example.[313] McPhail 'knits together five

---

[308] Sankey, n 290.
[309] Referring the matter to a competent court will be discussed in chapter 5.
[310] B. A. McPhail, 'Feminist Framework Plus: Knitting Feminist Theories of Rape Etiology into a Com - prehensive Model' (2016) 17(3) Trauma, Violence, & Abuse 314.
[311] See Brownmiller, n 169, 6-22, 231.
[312] C. M. Rennison, 'Feminist Theory in the Context of Sexual Violence' in G. Bruinsma & D. Weisburd (eds.), *Encyclopaedia of Criminology and Criminal Justice* (Springer 2018)1617.
[313] Sasha N. Canan and Mark A. Levand, 'A Feminist Perspective on Sexual Assault' in W. T. O'Donohue and P. A. Schewe (eds), *Handbook of Sexual Assault and Sexual Assault Prevention* (Springer 2019) **14.**

feminist theories into a comprehensive model that better explains the depth and breadth of the etiology of rape.'[314]

Donat and D'Emilio's review of the historical foundations of sexual assault depicts a situation like that of Sierra Leone. The authors referred to the time when women were regarded as naturally sexually 'pure' while men were assumed to have an innate sexual lust'. This made it women's responsibility 'to use their purity to manage men's lust.' A woman who was sexually assaulted 'needed to comply with male standards of her behavior by proving her non-consent through physical and verbal resistance, and through immediate disclosure of the attack...'[315]

However, any woman who defied these ideas of purity, either via consensual sex or rape, was deemed corrupted.[316] Rape victims in Sierra Leone, as in other African countries, are considered 'spoilt goods' or 'spiritually polluted', and unsuitable for marriage, if unmarried.[317] The rejection and stigma the Bush wives were subjected to is traceable to such patriarchal ideas. The Bush wives and not their perpetrators were therefore blamed for the acts of sexual violence they experienced during the war.

Not surprisingly, from the pre-colonial era until recently, private harms, such as sexual violence, perpetuated against women have never been burning issues deserving the attention of states, such as Sierra Leone. The state attitude ignores the link between 'inferior' private harms and prioritized public harms. For example, O'Rourke asserts that public harms which occur during conflicts exacerbate women's private experiences of harms.[318] O'Rourke's assertion is based on three case studies of women's experiences that reveal four areas in which political violence negatively impacts women's private experiences of harm. Only the fourth aspect is relevant to this chapter, that is, the state's

---

[314] McPhail, n 310.
[315] P. L. N. Donat and J. D'Emilio, 'A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change' (1992) 48(1) Journal of Social Issues 9, 10.
[316] Ibid.
[317] L Stark, 'Cleansing the Wounds of War: an Examination of Traditional Healing, Psychosocial Health and Reintegration in Sierra Leone' (2006) 4(3) Intervention 206, 209; 'Sexual Violence Patterns, Causes, and Possible Solutions. An Interview with Kudakwashe Chitsike, Research and Advocacy Unit, Zimbabwe, and Jessica Nkuuhe, Independent Consultant, Uganda' 43, in Doris Buss *et. al.* (eds) *Sexual Violence in Conflict and Post-Conflict Societies: International Agendas and African Contexts* (Routledge 2014) 43; Prachi H. Bhuptani and Terri L. Messman-Moore, 'Blame and Shame in Sexual Assault' in W. T. O'Donohue and P. A. Schewe (eds), *Handbook of Sexual Assault and Sexual Assault Prevention* (Springer 2019) 313.
[318] O'Rourke, n 296, 38; she identifies a complex but close relationship between public and private harms and therefore proposes a 'web of harms' that describes the connections between the different types of harms but rejects the merging of both harms into 'a single indistinguishable' whole.

incapacity to prohibit, prevent and punish perpetrators of private harms due to the prevailing violence.[319]

I argue that after the war, non-recognition of the harm of continuing forced marriage under domestic laws meant that the state failed to protect the Bush wives from sexual violence. Even the laws that were meant to protect women from sexual violence are ineffective because of challenges with enforcement. For example, treaty bodies have noted that the effective implementation and full enforcement of relevant laws on sexual violence, such as the **2012 Sexual Offences Act**, the **2005 Anti-Human Trafficking Act** and other relevant legislation have been hampered by inadequate resources.[320] The following legislation have criminalized physical and sexual violence against women but because of ineffective implementation, they offer little or no protection to women.

3.2.2. Domestic Violence Act, 2007.

The Domestic Violence Act addresses all types of violence in a domestic setting, criminalizing domestic violence and provides the police with the legal tools needed to investigate and prosecute these crimes. With marital rape now an offence under both general and customary law, by virtue of the **2007 Domestic Violence Act,**[321] in principle, a wife can refuse her husband sexual intercourse,[322] but in practice this is improbable.

The marital rape provision obviously lacks support even among the women it seeks to protect, as more than sixty percent of the Sierra Leonean women in a 2002 survey *'expressed the view that . . . it is a wife's duty/obligation to have sex with her husband even if she does not want to.'*[323] Many women, including some Bush wives, agree with the customary norm that a wife must not deny her husband sex,[324]

[319] The other areas are the militarization of everyday life which culminates in the state's infringement of women's bodily integrity; increased public regulation of women's private reproductive lives; and the recognition of women's collective action as potentially subversive, resulting in the public political manipulation of women's efforts to organize, O'Rourke, ibid.

[320] See CRC/C/SLE/CO/3-5, 2016, n 50, para. 21(a); CEDAW/C/SLE/CO/5, 2007, n 54, paras. 14 & 15; UN HRC, Working Group on the Universal Periodic Review, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council Resolution 5/1: Sierra Leone, (21 February 2011) UN Doc A/HRC/WG.6/11/SLE/3, 2011, paras. 25 & 26 [Hereinafter A/HRC/WG.6/11/SLE/3, 2011]; see also CRC/C/15/Add.116, 2000, n 237, paras. 15-18.

[321] Section 2(3), marital rape is punishable by a fine not exceeding Five Million Leones (Le5,000,000.00) or a term of imprisonment not exceeding two years.

[322] Section 2(2)(a) defines domestic violence to include sexual abuse; and section 1 provides: "sexual abuse" means the forceful engagement of another person in a sexual contact, whether married or not…'

[323] See PHR Report, n 165, 55; 3b (3) TRC Report, n 116, 254.

[324] For example, in Zambia, 'Traditional marriage counsellors instructed young brides that sexual intercourse was a man's right, …'see US Dept. of States, 'Zambia 2014 Country Report: Executive Summary', 27 < https://2009-2017.state.gov/documents/organization/236632.pdf > accessed 12 October 2015. Only 18 African states (Sierra Leone inclusive) have specific legislation criminalising marital rape; see US Dept of State, Country Reports on Human Rights Practices for 2015 < http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm >accessed 12 October 2015.

because refusal to give in to a husband's sexual demands is a ground for divorce under customary law. Unlike other laws, this statute has broadly defined marital rape and does not discriminate against those in informal domestic relationships, such as continuing forced marriages.[325]

This thesis accepts that customary norms favour the realities of men's lives and against women, but the survey shows that Sierra Leone may not be ready for the criminalising of marital rape yet, especially as it is against African culture. The biggest challenge will be in enforcement, even though the **Maputo Protocol** implicitly supports the prohibition of marital rape.[326] Lack of enforcement is because poor publicity of the Act impedes its effective implementation. Although the police have Family Support Units, they lack the necessary resources to provide adequate assistance to victims of sexual violence[327]

Before the criminalization of marital rape, husbands could rape their wives without committing a crime, as women were regarded as the property of their husbands. A husband could therefore not commit a property crime against himself. So, for example, under customary law a wife must never refuse her husband sexual intercourse unless she has a reasonable cause.[328] The categories of reasonable cause include: serious illness which renders the wife physically incapable of having sexual intercourse; menstruation, suckling a very young child before the prescribed period for weaning; intercourse during the daytime or in the bush and, among the tribal Muslims, the feast of Ramadan.[329]

For Bush wives, given the intimidating conditions under which they were held, it was impossible for them to reject their abductor-husband's sexual demands. Refusing to submit to the wishes of their husbands attracted not divorce, as in customary law marriages but severe punishment or death.[330] Bush wives in post-conflict unions may be slightly better off than when they were in captivity. However, just like in captivity, they lack the rights inherent in a conjugal relationship, and the extrinsic rights conferred by state and religious authorities.

---

[325] Section 3 (1) (b), 2007 **Domestic Violence Act** states that: 'A domestic relationship means a family relationship, a relationship akin to a family relationship or a relationship in a domestic situation that exists or has existed between a complainant and an offender and includes a relationship where the complainant lives with the offender in a relationship in the nature of a marriage notwithstanding that they are not, were not married to each other'.

[326] Its article 4 provides that: 'States Parties shall take appropriate and effective measures to: 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'.

[327] Memunatu Pratt and Kristin Valasek, 'Sierra Leone' in Miranda Gaanderse and Kristin Valasek (eds.), The Security Sector and Gender in West Africa: A Survey of Police, Defence, Justice and Penal Services in ECOWAS States (DCAF 2011) 215, 223, 225 < 00_complete_west_africa_gender_survey.pdf (iknowpolitics.org)> accessed 20 November 2020.

[328] Joko Smart, n 115, 101.

[329] Ibid.

[330] AFRC Trial Chamber J., n 154, paras.1455 - 1458.

So, the benefits of the **Domestic Violence Act** in relation to marital rape is unlikely to be enjoyed by rural women, including Bush wives, who are bound by customary law.

3.2.3. Sexual Offences Act, 2012.

To end the culture of impunity for those found guilty of having perpetrated sexual offences, the **Sexual Offences Act** was passed in 2012. Despite the enactment of this law, there were increased incidences of sexual violence against girls leading to injury and death and impunity for these crimes. Consequently, invoking section 29 of the **1991 Constitution,** the Head of State of Sierra Leone declared 'a State of Public Emergency over rape and sexual violence' on 19 September 2019.[331] Following the declaration, the Parliament enacted the **2019 Sexual Offences (Amendment) Act**. This Act provides for *inter alia*, the increase of the maximum penalty for rape and sexual penetration of a child from fifteen years to life imprisonment;[332] the offence of aggravated sexual assault;[333] an alternative conviction of aggravated sexual assault, for prosecution of offences under the Act and the making of rules to further regulate the practice and procedure under the Act.[334]

Under the **Sexual Offences (Amendment) Act** a victim of a sexual offence shall be entitled to certain benefits, such as free medical treatment and a free medical report from accredited hospitals. It also reduces delay by allowing the Attorney-General to prosecute such offences in the High Court without going through a preliminary investigation in the Magistrate Courts.[335] Contrary to customary law practice of settlement of sexual offences, any person who engages or attempts to engage in a settlement or compromise on any matter which is a sexual offence is liable on conviction to a fine of Le10,000,000 or to a term of imprisonment of not less than one year and not more than 10 years or to both fine and imprisonment.[336]

These progressive measures can only benefit women if enforced and effectively implemented. As noted earlier and confirmed a year later by a civil society group, despite the adoption of the **2019 Sexual Offences (Amendment) Act**, sexual and

---

[331] Government of Sierra Leone, 'Contribution from the Judiciary of Sierra Leone to the Thematic Report on "Women's and Girls' Sexual and Reproductive Health and Rights in Situation of Crisis" to be Presented to the 47th Session of the Human Rights Council' (28 August 2020) 1-2.
[332] Section 3(a).
[333] Section 3(2).
[334] Section 5(1).
[335] Section 4.
[336] According to section 20(1) of the **2007 Domestic Violence Act**, domestic violence (defined to include sexual abuse, see n 322) which is not aggravated may be settled out of court, but section 20 (4) does not approve of out-of-court-settlements in respect of aggravated domestic violence.

gender-based violence against women and girls, including rape, and sexual abuses in marriage, remained pervasive in the country.[337]

3.3. Failure to Hold Perpetrators of Sexual Violence to Account under Sierra Leone's Legal System.

The landmark ruling by the SCSL on forced marriage as a crime against humanity has unfortunately, had no visible impact on the legislative landscape of the State. Eighteen years after the end of the Sierra Leonean war, the crime of forced marriage has not been incorporated into its criminal legislation. The only legislation that prohibits the act of forced marriage is the **2007 Child Rights Act**, but its periphrastic provisions are limited to girls under 18 years of age.[338] Consequently, acts of forced marriage against persons above eighteen years are currently punished under other types of offences, contained in the **1861 Offences against the Person Act**. This situation, according to the Committee Against Torture, creates actual or potential legal loopholes for impunity for acts of torture and at their prevalence.[339] Although some of its elements, such as rape and forced labour are prohibited by the **2012 Sexual Offences Act** and the **1991 Constitution** respectively, prosecution of perpetrators would not be easy.

Furthermore, although the **2007 Child Rights Act** prohibits forced marriage / early marriage,[340] it is worrisome that both terms are not defined in the Act and the offence attracts very low penalties: a fine or a term of imprisonment not exceeding one year or both.[341] The creation of such actual or potential legal loopholes allows a situation of impunity for acts of forced marriage and causes uncertainty and difficulties in the prosecution of its perpetrators. Impunity cannot be eliminated when such offences are not punishable by appropriate penalties commensurate with their grave nature. The inability of victims of forced marriage aged 18 years and above to seek justice in Sierra Leone courts is contrary to the 1981 **African Charter on Human and Peoples' Rights**[342] to which Sierra Leone is party. Its article 7 (1) provides that:

---

[337] HRC Working Group on the Universal Periodic Review, Summary of Stakeholders' Submissions on Sierra Leone, (25 February 2021) UN Doc A/HRC/WG.6/38/SLE/3, para. 60.

[338] The single mention of 'forced marriage' in the **Child Rights Act** is in relation to the function of the National Commission for Children in section 11 (e) of undertaking of wide dissemination of the **Convention on the Rights of the Child** (adopted 20 November 1989, entered into force 2 September 1990) 1577 U.N.T.S. 3 (UNGA) [Hereinafter Child Rights Convention/CRC], and the **African Charter on the Rights and Welfare of the Child** to aid the elimination of forced marriage. Prohibition of 'forced marriage' is inferred from section 34 (2) (c) which provides that 'No person shall force a child to be married'; while a child is defined as a person below the age of eighteen.

[339] See UN CAT, Concluding Observations on the Initial Report of Sierra Leone, (20 June 2014) UN Doc CAT/C/SLE/CO/1 para. 8. [Hereinafter CAT/C/SLE/CO/1, 2014]

[340] See sections 34 and 46 (1) (a) respectively.

[341] Section 35.

[342] (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev 5, 21 I.L.M. 58 (1982), ratified by Sierra Leone on 21 September 1983. [Hereinafter **African Charter**]

> *Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force, …*

Furthermore, several UN human rights treaties monitoring bodies have expressed concerns at the resultant 'low rate of convictions for reported incidents of rape and defilement.'[343] Incidentally, these challenges are not peculiar to Sierra Leone. 'Breaking the Silence', a recent feminist's cliché, demonstrates how victims of sexual violence have been 'enabled to name their experiences of violence and abuse and to speak about them openly.'[344] However, 'Breaking the Silence' has not translated into significant changes as reporting and conviction rates remain low.[345]

Feminists have lamented the law's inadequacy in responding to sexual violence. According to Hearn, violence is gendered.[346] Carline and Easteal acknowledge the obvious and hidden obstacles for women accessing legal remedies in general and even more so for survivors of violence.[347] The reform of the letter of the law to respond more effectively to violence against women does not usually translate to success as other barriers frequently exist. From the state and judiciary failing to respond to a range of abusive behaviours to societal acquiescence, all amount to activities that should raise concern.

Focusing on the responsibility of perpetrators, though important, is not enough to help eradicate violence against women. The state's responsibility is vital, and includes over and above reforming laws, changes in practices and the challenging of problematic beliefs. In Sierra Leone, such lapses have been attributed to 'delays in the Department of Justice and the limited availability of trained medical experts'[348] and the poor and ineffective investigation of such cases. [349] The need for forensic facilities to assist in the investigation and prosecution of such crimes,[350] out-of-court-settlements and interference by traditional leaders[351] are

---

[343] CRC/C/SLE/CO/3-5, 2016, n 50, para. 20(d).
[344] Liz Kelly, *Surviving Sexual Violence* (Polity Press 1988) 'vi'(Acknowledgment), 217.
[345] Haley Clark, 'A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence' in A. Powell et. al. (eds) *Rape Justice* (Palgrave Macmillan 2015) 18; Anne-Marie De Brouwer, 'The Importance of Understanding Sexual Violence in Conflict for Investigation and Prosecution Purposes' (2015) 48 Cornell Int'l L. J. 639.
[346] J. Hearn, 'A Multi-Faceted Power Analysis of Men's Violence to Known Women: From Hegemonic Masculinity to the Hegemony of Men' (2012) 60(4) The Sociological Review 589, 590.
[347] See Anna Carline and Patricia Easteal, *Shades of Grey: Domestic and Sexual Violence Against Women* (Routledge 2014) in general, particularly chapters 8 & 9.
[348] CRC/C/SLE/CO/2, 2008, n 50, para. 72.
[349] A/HRC/WG.6/11/SLE/3, 2011, n 320, para. 22.
[350] UN HRC, Working Group on the Universal Periodic Review, National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council Resolution 5/1: Sierra Leone, (14 February 2011) UN Doc A/HRC/WG.6/11/SLE/1, para. 108.
[351] A/HRC/WG.6/11/SLE/3, 2011, n 320, para. 22.

also factors that lead to fewer prosecutions. Consequently, as suggested by treaties Committees, it is necessary to take effective measures involving 'the prompt and systematic prosecution of perpetrators;[352] the punishment of convicted perpetrators with appropriate sanctions;[353] including by not accepting any out-of-court settlements in such cases.[354] Without expressly stating so, it is not unlikely that the HRC supports, *inter alia,* the repeal of the **1999 Lomé Peace Agreement (Ratification) Act**.[355]

The fact that perpetrators of forced marriage in conflict were pardoned and no longer answerable before any court of law in Sierra Leone, by virtue of the Amnesty Act means further denial of justice for the victims, aged 18 years and above. Given that the amnesty does not preclude the criminalization of offences that were pardoned, the failure or unwillingness of the State to incorporate forced marriage into its criminal legislation is yet another failure to protect women's rights. A brief analysis of the Amnesty Act will show how and why Sierra Leone passed such a law, and its impact on victim's rights. Especially, as this law is contrary to the commitment in the preamble of the Lomé Peace Agreement to promote "…full respect for human rights and humanitarian law," especially in relation to victims of sexual violence.

3.3.1. The 1999 Lomé Peace Agreement (Ratification) Act

On 7 July 1999, the government of Sierra Leone and the Revolutionary United Front (RUF) rebel group signed the Lomé Peace Agreement.[356] The Agreement was the third in the series of peace agreements signed to end Sierra Leone's then eight-year war; one of the world's most brutal civil wars.[357] This agreement was however, never fully implemented as hostilities broke out shortly afterwards. However, despite the failure of the Lomé Peace Agreement resulting in the resumption of hostilities, the Agreement was ratified and passed into law-the **1999 Lomé Peace Agreement (Ratification) Act**.[358] The passing of the Act gave

[352] CCPR/C/SLE/CO/1, 2014, n 56, para. 15.
[353] Ibid.
[354] CRC/C/SLE/CO/3-5, 2016, n 50, para. 21(d).
[355] Ibid, para. 17; [Hereinafter the **Amnesty Act**].
[356] the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, 7 July 1999 [Hereinafter Lomé Peace Agreement]; see Peace Accords and Ceasefire Agreements - Sierra Leone Web <http://www.sierra-leone.org/history-peaceaccords.html accessed 28 November 2018; see Abdul Tejan-Cole, Painful Peace: Amnesty under the Lomé Peace Agreement in Sierra Leone' (1999) 3(2) Law, Democracy & Development 239.
[357] See Peace Accords and Ceasefire Agreements, n 356; according to Paul Takirambudde, the Executive Director. Human Rights Watch Africa Division, 'This is not a war in which civilians are accidental victims. This is a war in which civilians are the targets. The crimes against humanity are unspeakably brutal, and the world must not simply avert its attention from the crisis.' Sierra Leone News June 1999 < http://www.sierra-leone.org/Archives/slnews0699.html >accessed 12 October 2016.
[358] In accordance with the proviso to section 40 (4) of the **1991 Constitution**, on 18 July 1999, the Sierra Leone Parliament ratified the agreement by passing the Act. On July 23, 1999, Parliament also passed the **1999 Revolutionary United Front of Sierra Leone (Participation in Political and Democratic Process) Act**.

legal backing to the provisions of the Agreement which were imported wholesale into the Act.

3.3.1.1. *Legitimacy of the 1999 Lomé Peace Agreement (Ratification) Act*

In line with Sierra Leone's human rights obligations, the Lomé Peace Agreement contains several human rights provisions. For example, the Agreement's commitment to promoting full respect for human rights and humanitarian law is clearly stated in its preamble. Apart from the creation of a Truth and Reconciliation Commission, which, *inter alia*, was meant to address impunity,[359] it also recognizes the basic civil and political rights adopted by the UN and the OAU.[360]

The Agreement also creates an autonomous quasi-judicial national Human Rights Commission, for addressing grievances of the people who allege violations of their basic human rights. However, the Agreement's provisions granting pardon and amnesty to perpetrators of heinous crimes, such as forced marriage, committed during the war, conflict with Sierra Leone's human rights obligations and its ostensible pro-human rights stance. For the perpetrators, the greatest significance of the peace agreement is a legal one, as it confers upon the beneficiaries of the amnesty an irrevocable legal immunity from prosecution.

3.3.1.2. *Analysis of the Amnesty Provisions of the 1999 Lomé Peace Agreement (Ratification) Act*

The Lomé Peace Agreement which the Amnesty Act ratified is made up of 36 articles and 5 annexes. Article IX covers the amnesty and pardon provisions, while annex 5 specifies the action required. Its article IX (1) provides that:

> *in order to bring lasting peace to Sierra Leone, the government shall take appropriate legal steps to grant the RUF leader, Corporal Foday Sankoh absolute and free pardon.*

Under Article IX (2), the government of Sierra Leone agreed to grant:

> *absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objectives, up to the time of the signing of the present Agreement.*[361]

The Amnesty Act further assuaged perpetrators of the fear of prosecution in its article IX (3) and article X. Article IX (3) provides:

> *[T]he Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or*

[359] See 6(1) **2000 Truth and Reconciliation Commission Act** [Hereinafter **TRC Act**]
[360] Now 'African Union'.
[361] **1999 Lomé Peace Agreement**, art. 9 (2).

CDF in respect of anything done by them in pursuit of their objectives as members of those organisations, since March 1991, up to the time of the signing of the present Agreement. In addition [we] guarantee immunity to former combatants, exiles and other persons, currently outside the country for reasons related to the armed conflict...

Article X is an attempt to legitimize the amnesty by abrogating fundamental human rights of victims enshrined in the Constitution. It states:

In order to ensure that the Constitution of Sierra Leone represents the needs and aspirations of the people of Sierra Leone and that no constitutional or any other legal provision prevents the implementation of the present Agreement, the Government of Sierra Leone shall take the necessary steps to establish a Constitutional Review Committee to review the provisions of the present Constitution, and where deemed appropriate, recommend revisions and amendments, in accordance with Part V; Section 108 of the Constitution of 1991.[362]

In view of the revocation of fundamental constitutional rights of victims, in the following section**,** I will examine the constitutionality of the amnesty provisions. I seek to find out if the Lomé Peace Agreement (Ratification) Act is legitimate?

3.3.2. Amnesty and the Constitution

Overhanging a country's legal system is its constitution, which is regarded as the supreme law of that country. The constitution of Sierra Leone like that of other countries has a bill of rights, with the **1948 UDHR** as its foundation.[363] As the supreme law of the land, constitutional provisions prevail when other laws violate constitutional provisions, and such laws shall, to the extent of the inconsistency, be void and of no effect.[364]

The **1991 Constitution** of Sierra Leone in its Chapter III recognizes and protects fundamental human rights and freedoms of the individual, and no other law should conflict with these provisions.[365] These rights and freedoms include protection from inhuman treatment, protection from slavery and forced labour, right to life, liberty, security of person, the enjoyment of property, and the protection of law. Others are respect for private and family life, protection of freedom of movement and protection from deprivation of property, protection for privacy of home and other property, and freedom of conscience, of expression and of assembly.

---

[362] Section 108 provides for alteration of the **1991 Constitution**

[363] The **1991 Constitution** provides in its Chapter II (Fundamental Principles of State Policy) and Chapter III (Bill of Rights) for all the rights enshrined in the **1948 UDHR**, as well as the **African Charter** and the **International Covenant on Civil and Political Rights** (adopted 16 December 1966, entered into force 23 March 1976) 999 U.N.T.S. 171 (UNGA) [Hereinafter **ICCPR**]

[364] **1991 Constitution**, s. I71 (15).

[365] Ibid, ss. 15-27.

The victims of forced marriage were deprived of all these constitutional rights and freedoms, in particular, protection of law, protection from inhuman treatment and torture, and protection from slavery and forced labour, before, during and after their abduction by the rebels. For example, section 20 (1) provides: 'No person shall be subject to any form of torture or any punishment or other treatment which is inhuman or degrading.' Enforcement of these protective provisions is provided for in section 28 (1) of the **Constitution**:

> *Subject to the provisions of subsection (4), if any person alleges that any of the provisions of sections 16 to 27 (inclusive) has been, is being or is likely to be contravened in relation to him by any person then, without prejudice to any other action with respect to the same matter which is lawfully available, that person… may apply by motion to the Supreme Court for redress.*

So, contrary to explicit constitutional provisions prohibiting torture and other inhuman treatment, such as slavery and forced labour,[366] that the Bush wives were subjected to, the amnesty provisions absolve perpetrators of blame and protects them from prosecution. Moreover, none of the limitations in the **Constitution**, such as public emergency[367] can be justification for the government extinguishing the citizen's fundamental human rights and freedoms. Section 29 (5) states:

> *During a period of public emergency, the President may make such regulations and take such measures as appear to him to be necessary or expedient for the purpose of maintaining and securing peace, order and good government in Sierra Leone or any part thereof.*

Even if there was such justification during the war, with the cessation of the war, the amnesty provisions contained in the Amnesty Act, and in particular article X that extinguishes constitutional rights and freedoms should have been repealed.

Furthermore, the **Constitution** also guarantees civil, political rights and socio-economic and cultural rights which are non-justiciable rights, to all its citizens. For example, the 'Fundamentals of State Policy' in Chapter II of the **Constitution**[368] states that the Republic of Sierra Leone shall be a State based on the principles of 'freedom, democracy and justice.'[369] In addition, the social objectives of the State are founded on the ideals of 'freedom, equality and justice.'[370] In furtherance of these objectives, the **Constitution** provides that

---

[366] Ibid, s. 19 prohibits slavery and forced labour.
[367] Ibid, s. 29.
[368] Ibid, ss. 4-14.
[369] Ibid, s. 5(1).
[370] Ibid, s. 8(1).

every citizen shall have equality of rights, obligations, and opportunities before the law.[371]

Although section 14 of the **Constitution** provides that the provisions contained in Chapter II shall not confer legal rights and shall not be enforceable in any court of law, it stipulates that the principles contained therein shall nevertheless be fundamental in the governance of the State and it shall be the duty of Parliament to apply these principles in making laws. Any laws enacted by Parliament under section 14 of the **Constitution** must therefore conform to the social objectives of the State.[372] Moreover, section 4 provides for the fundamental obligations of all organs of Government and all authorities and persons exercising legislative, executive, or judicial powers to conform to, observe and apply the provisions of Chapter II.

However, neither the amnesty provisions in the Lomé Peace Agreement nor the Amnesty Act, enacted by the Sierra Leone Parliament can be said to conform to any of the objectives of the State as set out in Chapter II. The enactment of the Amnesty Act by Parliament, in 1999 was in violation of the **Constitution**. By enacting the Act, the Parliament acted in breach of its constitutional duty to enact laws that would promote the social objectives of state. For example, article IX (3) which '...ensures that no legal action is taken against rebels…' effectively blocks the constitutional right of unfettered access to the courts,[373] thus ensuring that justice is denied citizens, including Bush wives whose rights have been violated. By granting their abductors absolute amnesty, as per the provisions of **the Lomé Peace Agreement / Lomé Peace Agreement (Ratification) Act**, the victim's constitutionally guaranteed rights and freedoms were 'unlawfully' erased; thus, defeating the purpose of chapter II of the **Constitution**.

Although the amnesty may be valid only within Sierra Leone, its provisions are clearly contrary to the objectives of truth and reconciliation commissions, as it violates the principle of non-derogability of the prohibition of the most serious human rights violations that amount to crimes against humanity or war crimes. The amnesty provisions lacked widespread support and have had a negative impact on the post-conflict lived experiences of female victims of sexual violence. The provisions do not respect, promote, nor protect women's rights in Sierra Leone, but rather contribute to the violation of these rights and contribute to a climate of impunity.

---

[371] Ibid, s. 8 (2) (a).
[372] Ibid, s. 73(3) provides that Parliament may make laws for the peace, security, order and good government of Sierra Leone.
[373] Ibid, s. 8 (2) (c).

Thus, the Amnesty provisions promoted sexual violence, and did not ameliorate but contributed to the harms women experienced during and after the war. The amnesty provisions in the agreement created several challenges for the victims of the war. For example, the ability of the victims of forced marriage to obtain judicial remedies for the violation of their human rights is circumscribed by these provisions. This is evidence of lack of respect for women's human rights in rural Sierra Leone, which is key to the harms women experienced before, during and after the war.

It may be argued that amnesties and pardons have been part of the international legal landscape for long, but the expressions of concern and condemnation by various individuals and groups against the signing of the **Lomé Peace Agreement**,[374] is indicative of the unacceptability of amnesties. There are two key, overlapping questions, which answered will help reveal the actual impact of the **Lomé Peace Agreement** on the human rights of victims of forced marriage. They are: does Sierra Leone's amnesty violate the principle of non-derogability of the prohibition of the most serious human rights violations that amount to crimes against humanity or war crimes? Secondly, despite the amnesty provisions, do victims of forced marriage have the right to prosecute their abductors in the domestic forum? In other words, can the victims challenge the infringement of their constitutional rights in Sierra Leonean courts?

3.4. Right to Seek Redress in the Domestic Forum

By virtue of section 124 of the **Constitution**, the Supreme Court of Sierra Leone has 'exclusive original jurisdiction' over all matters relating to the enforcement and interpretation of the **Constitution**. These involve cases in which a person alleges a violation or infringement of a constitutionally guaranteed right or freedom, a violation of any other provision of the constitution, or requires the interpretation or enforcement of a provision of the constitution. Only the Supreme Court of Sierra Leone can determine whether any authority or person has exceeded their duly constituted powers. However, where a question of enforcement or interpretation of the constitution arises in a lower court, that court must stay proceedings and refer the matter to the Supreme Court for determination.[375]

[374] Including the Sierra Leone Bar Association, the Sierra Leone Human Rights Committee, Human Rights Watch, Amnesty International. The UN also objected to the sweeping amnesty provisions but signed after inserting a caveat; see Tejan-Cole, n 356, 242-243; see also HRW, 'Annan Must Reject Amnesty for Sierra Leone Crimes' < https://www.hrw.org/news/1999/07/07/annan-must-reject-amnesty-sierra-leone-crimes> accessed 3 May 2021; AI, 'Sierra Leone: Amnesty International's Recommendations' (Commonwealth Heads of Government Meeting, Durban, November 1999) < https://www.amnesty.org/es/wp-content/uploads/2021/06/afr510111999en.pdf > accessed 3 May 2021; and UNSC, 'Report of the Secretary General on UNOMSIL', 30 July 1999 (S/1999/836) para. 54.

[375] **1991 Constitution**, s. 124(2).

Access to constitutional jurisdiction usually depends on *locus standi*, that is, the relationship of the complainant to the matter. While *locus standi* may be restricted to persons directly affected by the alleged violation in some jurisdictions, in Sierra Leone, this is not a requirement. Section 127 of the **Constitution** permits any person who alleges that an Act, or any act or omission of any person or authority violates a provision of the **Constitution** to invoke the constitutional jurisdiction of the Supreme Court to have the act or omission declared unconstitutional.

In such cases, the complainant need not prove that she has 'sufficient connection', that is, has suffered an injury in fact, the person or party being sued caused the injury, or whether the court's order can 'redress' the injury the plaintiff has suffered from the alleged unconstitutional act or omission to have access to the Supreme Court's constitutional jurisdiction. If the complainant believes that an unconstitutional act or omission has occurred, he or she may go to the Supreme Court to seek a declaration to that effect.

Primarily, section 28 of the **Constitution** grants persons the right to seek redress in the Supreme Court of Sierra Leone if the fundamental rights and freedom provisions of sections 16-27 of the **Constitution**[376] have been or are likely to be contravened. With the **Amnesty Act** being an extant law of the land, and, with the Government of Sierra Leone ensuring that no official or judicial action is taken against the rebels, the rights of the victims of forced marriage to seek redress appears to have been eroded. Moreover, the constitutional right to seek protection on infringement of these rights and freedoms, and to obtain redress in the Supreme Court have been suspended or nullified by virtue of sections 2 and 3 of the **Amnesty Act**.

Section 2 provides that: 'The ratification effected by section 1 shall extend to the alteration of the law of Sierra Leone…' Section 3 states: 'In this Act, 'law' has the same meaning assigned thereto in subsection 1, section 171 of the **1991 Constitution** of Sierra Leone.' Section 171(1), the interpretation section of the **Constitution**, states 'law' includes any instrument having the force of law, made in exercise of a power conferred by law. 'Law of Sierra Leone' therefore includes the **Constitution**. In effect, the **Constitution** of Sierra Leone was altered by virtue of the ratification, and this was expressly stated in Article X of the said Act, entitled 'Review of the present Constitution' as follows:

> *In order to ensure that the Constitution of Sierra Leone represents the needs and aspirations of the people of Sierra Leone and that no constitutional or any other legal provision prevents the implementation of*

[376] Ibid, sections on fundamental rights and freedoms.

the present Agreement, the Government of Sierra Leone shall take the necessary steps to establish a Constitutional Review Committee to review the provisions of the present Constitution, and where deemed appropriate, recommend revisions and amendments, in accordance with Part V, section 108 of the Constitution of 1991.[377]

What is clear from sections 2 and 3 of the **Lomé Peace Agreement (Ratification) Act**, read with section 171(1) of the **Constitution**, is that once a person has been granted amnesty in respect of an act, omission, or offence: (a) the offender can no longer be held 'criminally liable' for such offence and no prosecution in respect thereof can be maintained against him or her; and (b) such an offender can also no longer be held civilly liable personally for any damages sustained by the victim and no such civil proceedings can successfully be pursued against him or her.

The implication of these provisions is that the **Constitution**, the supreme law of the country has been curtailed and suspended, due to the amnesty granted to the rebels. In addition, the alteration does not consider the full range of the State's international human rights obligations. The fact that perpetrators of forced marriage were pardoned and no longer answerable before any court of law in Sierra Leone, means for the victims, a denial of justice and a violation of their human rights. Most importantly, the egregious violations of the laws and the **Constitution** of the country conflict with the main purpose of the SL TRC. As I mentioned in the previous chapters, the level of impunity and cycle of violence, of sexual violence against women, is still very high, while genuine healing and reconciliation remain elusive, mainly because the SL TRC largely failed to respond to the needs of victims. Consequently, the human dignity of victims of sexual violence was not restored, leading in many instances to repetitions of the violations and abuses such victims suffered during the war.

Victims of forced marriage have therefore been ignored and abandoned, without access to justice, even though the amnesty provisions in the **Amnesty Act** are unconstitutional, being inconsistent with the provisions of section 28 of the **Constitution**. Furthermore, they are null and void under section 171 (15) of the **Constitution**, as they obliterate constitutionally guaranteed rights. Notwithstanding the amnesty provisions, Sierra Leone is obliged, under international law, to investigate and punish all those responsible for sexual violence against women in conflict, including forced marriages. Failure or unwillingness of the State to do so should not preclude the victims from seeking

[377] Ibid, s. 108 deals with alteration of the **Constitution**.

redress on their own, as the pertinent reliefs are to be found in the very **Constitution** that the Act seeks to invalidate.

Notwithstanding the extant amnesty provisions, and in particular, the Government of Sierra Leone assurance that no official or judicial action would be taken against the rebels, the rights of the victims of forced marriage to seek redress have not been totally eroded. The constitutional right to seek protection on infringement of these rights and freedoms and to obtain redress in the Supreme Court, an arm of government, may appear to have been infringed and curtailed by the government. However, the implication of sections 28, 124 and 127 of the **Constitution** is that in Sierra Leone, both natural and artificial persons, including associations, companies and non-governmental organizations can challenge the unconstitutionality of the acts and omissions of the government in the Supreme Court. This makes access to the Supreme Court a reality for the victims of forced marriage.

However, in the event of the court's refusal to entertain such claims, for whatever reasons, victims have recourse to regional judicial and quasi-judicial bodies with human rights jurisdiction, as will be discussed in chapter four. In the determination of such claims, one of the questions the courts will answer is whether the said amnesty clauses violate the principle of non-derogability of the prohibition of the most serious human rights violations that amount to crimes against humanity or war crimes these bodies. To do so they will rely on both international humanitarian and international human rights law. In the next section, I will analyse the relationship between the domestic legal system of Sierra Leone and international law.

3.5. Status of International Law in Sierra Leone Legal System

There is no provision in the 1991 Sierra Leone **Constitution** that spells out a hierarchy of customary or conventional international law within the national legal system. However, the proviso to section 40 (4) of the **Constitution** outlines requirements for domestic ratification of international treaties:

> *Provided that any Treaty, Agreement or Convention executed by or under the authority of the President which relates to any matter within the legislative competence of Parliament, or which in any way alters the law of Sierra Leone … shall be subject to ratification by Parliament – (i) by enactment of Parliament; or (ii) by resolution supported by the votes of not less than one-half of the Members of Parliament.*

Sierra Leone is a dualist country in relation to international law, so international treaties are applicable domestically only after incorporation into national legislation by Parliament or through some other means sanctioned by

Parliament.[378] Although not a party to the **Vienna Convention on the Laws of Treaties**, Sierra Leone is, under customary international law, obliged to recognize in all circumstances the supremacy of both conventional international law and customary international law with regard to its national law.[379] This obligation applies to all national law, including constitutions and legislation.[380] Therefore, Sierra Leone, as a matter of customary international law, should undertake not legislative changes necessary to comply with its obligations under treaties and customary international law. In addition, any judgements based on these obligations are binding.

As a state party to several international and regional treaties, Sierra Leone is obliged under both international humanitarian and international human rights law to investigate and prosecute serious violations that constitute crimes, such as 'crimes against humanity' or 'war crimes.' The major international crime that the Bush wives was subjected to by their abductors was forced marriage. Forced marriage meets the requirements of torture and cruel, inhuman, or degrading (CID) treatment, or ill-treatment, as will be discussed in section 3.7 below.

3.6. Amnesty Clause: Violation of the Principle of 'Non-derogability'

Although the amnesty provisions in the **Amnesty Act** are unconstitutional, being inconsistent with the provisions of section 28 of the **Constitution**,[381] perpetrators of heinous crimes, such as forced marriage, still enjoy immunity under the **Amnesty Act**. Regardless of the broad interpretations given to Article IX (2) and (3) of the **Lomé Peace Agreement**, Tejan-Cole correctly contends that the amnesty provisions in the agreement can apply only to national law and not to

[378] According to the dualist approach, a state must ratify and adopt international law into its own domestic law before it would apply within that state, as international and national law are two completely separate legal systems; see Rosalyn Higgins *et al.*, *Oppenheim's International Law: United Nations* (Oxford UP 2017) 397.

[379] Although for over a century, many international court decisions, arbitral awards and public international law experts have supported 'the fundamental principle of international law that international law prevails over domestic law,' this claim has been rejected by several public international law experts and domestic courts 'who claim the competence to scrutinize whether international rules and court decisions are in conformity with the domestic constitution.' For the former, see for example, *Advisory Opinion Concerning the Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947 (Order)*, (ICJ), 26 April 1988 <https://www.refworld.org/jurisprudence/caselaw/icj/1988/en/16893> accessed 28 February 2024; Robert Jennings and Arthur Watts (eds), *Oppenheim's International Law vol. 1, Peace* (9th ed., OUP 2008) 82-86; Malcolm N. Shaw, *International Law* (4th ed., CUP 1997) 102 -103; Edwin Borchard, 'The Relation between International Law and Municipal Law' (1940) 27 Va. L. Rev 137, 144. For the later, see Anne Peters, 'Supremacy Lost: International Law Meets Domestic Constitutional Law' (2009) 3 Vienna Online J on Int'l Const L 170, 187ff; *Suresh* v *Canada (Minister of Citizenship and Immigration)* [2002] 41 ILM 945 (SC Canada), para. 59.

[380] Mark E. Villiger, 'Commentary on the 1969 Vienna Convention on the Law of Treaties' (Martinus Nijhoff 2009) 375; 'Article 27 expressed the principle that on the international level international law is supreme.'

[381] As discussed in section 3.4. above.

international law; and are not legally binding outside the borders of Sierra Leone.[382]

3.7. International Humanitarian Law's Prohibition of Amnesty.

Several international humanitarian law treaties contain certain basic principles, such as freedom from torture that are non-derogable; rights which cannot be suspended, nor can an amnesty be granted in respect of them. The acts committed during forced marriage may qualify as elements of torture.[383] In *Prosecutor* v *Akayesu,* the Trial Chamber held rape to be a crime against humanity by comparing it to torture.[384] For example, all four **1949 Geneva Conventions**[385] contain similar provisions stating that:

> *The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanction for persons committing, or ordering to be committed, any of the grave breaches...*[386]

Grave breaches are defined to include, *inter alia*, wilful killing, torture, or inhuman treatment[387] and wilfully causing great suffering or serious injury to body or health.[388] The Bush wives were subjected to grave breaches during the war. Furthermore, each High Contracting Party shall be under an obligation to search for persons alleged to have committed such grave breaches and shall bring such persons, regardless of nationality, before its own courts.[389] Similar provisions enshrined in several international and regional human rights instruments are discussed below.

While the four **Geneva Conventions** expressly forbid the granting of amnesty, the **Protocol Additional to the Geneva Conventions**[390] on internal armed

---

[382] Tejan-Cole, n 356, 249-251.

[383] See Monika Satya Kalra, 'Forced Marriage: Rwanda's Secret Revealed' (2001) 7 U C Davis J Int'l L & Pol'y 197, 210, 215; HRW, n 178, 56-62; Carmel O'Sullivan, 'Dying for the Bonds of Marriage: Forced Marriages as a Weapon of Genocide' (2011) 22(2) Hastings Women's Law Journal 271.

[384] *Prosecutor* v *Akayesu* (Judgment) ICTR-96-4-T (2 September 1998) para. 598 [Hereinafter Akayesu's case].

[385] Namely **Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field** (adopted 12 August 1949, entered into force 21 October 1950) 75 U.N.T.S. 31 (Hereinafter 1st Geneva Convention); **Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea** (adopted August 12, 1949, entered into force 21 October 1950) 75 U.N.T.S. 85 (Hereinafter 2nd Geneva Convention); **Geneva Convention relative to the Treatment of Prisoners of War** (adopted 12 August 1949, entered into force 21 October 1950) 75 U.N.T.S. 135 (Hereinafter 3rd Geneva Convention); **Geneva Convention Relative to the Protection of Civilian Persons in Time of War** (adopted 12 August 1949, entered into force 21 October 1950) 75 U.N.T.S. 287 (Hereinafter 4th Geneva Convention).

[386] Ibid, articles 49, 50, 129, 146 of the first, second, third, and fourth **Geneva Conventions** respectively.

[387] Forced marriage in situations of conflict comprises of elements of torture and would qualify as a grave breach.

[388] Ibid, n 385, articles 50, 51, 130, 147 of the first, second, third and fourth **Geneva Conventions** respectively.

[389] Ibid, articles 49, 50, 129, 146 of the first, second, third, and fourth **Geneva Conventions** respectively.

[390] **Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts** (adopted 8 June 1977, entered into force 7 December 1978) 1125 U.N.T.S. 609) [Hereinafter **Additional Protocol II**].

conflicts, does not. It specifically provides for amnesty for those involved in non-international armed conflict. Contrary to the anti-amnesty provisions of the four **Geneva Conventions**, article 6(5) of **Protocol II**, dealing with internal armed conflicts, provides that:

> *...at the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.*[391]

Article 6(5) is clearly in conflict with the four Geneva Conventions' provisions calling for the punishment of persons who have committed grave breaches.[392] The difference in penalties advocated suggests that grave breaches only occur during international armed conflicts; an unrealistic opinion. However, Tejan-Cole claims that its restrictive interpretation has excluded the granting of amnesty to such persons, and notes that 'If it is otherwise, it defeats the *raison d'etre* of the Geneva Conventions and their Protocols.'[393] Relying on the *Encyclopedia of Public International Law*, he submits further that amnesty under international law is limited to treason and common crimes.[394] Incidentally, contrary to Tejan-Cole's claims, the Encyclopaedia includes war crimes as one of the crimes that qualifies for amnesty, in accordance with article 6(5) of **Protocol II**.[395]

3.8. Why Do States Grant Amnesties?

Faced with a choice between conflicting provisions, states have been liberal, sacrificing justice for peace. For long, the provisions of the **Geneva Conventions** prohibiting amnesties for grave breaches have not been regularly applied, while article 6(5) of **Protocol II** has been the state practice. Article 6(5) of **Protocol II** appears to be a widely accepted exception to the anti-amnesty provisions of the four **Geneva Conventions**, as the practice of granting amnesties or *de facto* impunity to those who commit crimes against humanity and war crimes has occurred in many other states, including Turkey,[396] Algeria,[397] Bangladesh,[398]

---

[391] Ibid.
[392] See articles 49, 50, 129, 146 of the first, second, third, and fourth **Geneva Conventions** respectively.
[393] See Tejan-Cole, n 356, 250.
[394] Rudolf Bernhardt et. al. (eds.), *Encyclopedia of Public International Law* (vol. 2, North-Holland 1992-2000) 184.
[395] Ibid.
[396] The international community agreed to an amnesty for the Turkish perpetrators of the massacres of Armenians during World War I; see the **1923 Treaty of Peace with Turkey** Signed at Lausanne which replaced the unratified **1920 Treaty of Sevres**, which would have required the Turkish Government to hand over those responsible to the Allied Powers for trial, not only did not contain provisions respecting the punishment of war crimes, but was accompanied by a 'Declaration of Amnesty' of all offenses committed between 1914 and 1922.
[397] The **1962 Evian Agreement between France and Algeria** prevented the persecution of persons who had committed atrocities during the Algerian war; see Carla Edelenbos, 'Human Rights Violations: A Duty to Prosecute?' (1994) 7 Leiden J. Int'l L. 5, 13.
[398] After the Bangladesh war of 1971, India and Bangladesh consented not to prosecute Pakistani charged with genocide and crimes against humanity in exchange for political recognition of Bangladesh by Pakistan, see Gary

South Africa,[399] and Sierra Leone.[400] State governments in Argentina, Chile, El Salvador, Guatemala, and Uruguay have each granted amnesty to members of former regimes who commanded death squads that tortured and killed thousands of civilians within their respective countries.[401]

In South Africa, for example, judicial authorities support amnesty for international crimes. A key issue that arose for determination by the South African Constitutional Court in the case of *Azanian People's Organisation and others* v *President of the Republic of South Africa and Ors*,[402] was whether the State was obliged by international law to prosecute those responsible for gross human rights violations. In addition, it determined if the provisions of section 20(7) of the **1995 Promotion of National Unity and Reconciliation Act,** which authorized amnesty for such offenders constituted a breach of international law. The applicants' contention that the State had a duty under international law to prosecute such persons was dismissed. Deputy President Mahomed held that it was doubtful whether the instruments of international law relied on, including articles 49, 50, 129, 146 of the Four **Geneva Convention** respectively applied to the situation in South Africa during the years of conflict.

The ruling in *Azanian People's Organisation's* case, however, conflicts with the four Geneva Conventions and the **1981 African Charter**, to which South Africa and Sierra Leone are parties.[403] The principle of *pacta sunt servanda* applies to the **African Charter**, a treaty within the definition of the **Vienna Convention on the Law of Treaties**.[404] Consequently, the African Human Rights Commission held in *Civil Liberties Organization* v *Nigeria, African Commission on Human and Peoples' Rights* that the contracting parties should neither enact laws that limit the exercise of the rights and freedoms guaranteed in the Charter nor override constitutional provisions or undermine fundamental rights guaranteed by their national constitution or international human rights standards.[405] States

---

J. Bass, 'Bargaining Away Justice: India, Pakistan, and the International Politics of Impunity for the Bangladesh Genocide' (2016) 41(2) International Security140; Cherif M. Bassiouni, Crimes Against Humanity in International Criminal Law (Springer 1999) 228-230.

[399] See next paragraph.

[400] See 3.3.1.

[401] Naomi Roht-Arriaza, 'State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law' (1990) 78 California L. Rev 449, 458-461, 484.

[402] [1996] (8) Butterworths Constitutional Law Reports 10, 15.

[403] South Africa ratified the **African Charter** on 9 July 1996 and Sierra Leone on 21 September 1983.

[404] (Adopted 23 May 1969, entered into force 27 January 1980) 1115 UNTS 331). Its art. 26 states: 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.'

[405] In *Civil Liberties Organization* v *Nigeria, African Commission on Human and Peoples' Rights* Comm. No. 129/94 (1995), para. 13; the Commission, in its denunciation of ouster clauses in decrees promulgated by the Nigerian military government, observed that 'Nigeria cannot negate the effects of its ratification of the [African] Charter through domestic action. Nigeria remains under the obligation to guarantee the rights of Article 7 to all of its citizens.'

must ensure that their laws do not contravene provisions of the Charter, and should not facilitate conduct that would violate the Charter.

Thus, 'an amnesty law adopted with the aim of nullifying suits or other actions seeking redress that may be filed by the victims or their beneficiaries, while having force within [a] national territory, cannot shield that country from fulfilling its international obligations under the Charter.'[406] From the foregoing, it appears that the outcome of any suit challenging the legality of amnesty provisions depends on the jurisdiction where it is filed.

3.9. International Human Rights Law's Prohibition of Amnesty.

Several human rights instruments to which Sierra Leone is party, prohibit and provide for the punishment of violations of human rights. The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**,[407] for example, prohibits torture.[408] Other regional and international human rights instruments to which Sierra Leone is party, also prohibit torture and inhuman treatment. These include: the **ICCPR**,[409] the **UN Standard Minimum Rules for the Treatment of Prisoners**,[410] the **UDHR**[411] and the regional **African Charter**,[412] which all prohibit torture and other cruel, inhuman, or degrading treatment by officials or persons acting in an official capacity.[413] The **Convention on the Rights of the Child** also provides for the right to freedom from torture, sexual exploitation, and abuse as well as liberty and security of person.[414] Rape has been recognized as torture by the UN Special Rapporteur on torture,[415] as well as the ICTY[416] and ICTR.[417]

---

[406] As per the ACHPR in *Malawi African Association & Ors*. v *Mauritania* (Communication No. 54/91, 61/91, 98/93, 164/97, 196/97, 210/98) [2000] ACHPR 19, (11 May 2000), the Mauritanian government issued an enactment, granting amnesty to those accused of perpetrating the series of murders for which the beneficiaries of the victims claimed compensation of injuries suffered.

[407] (adopted 10 December 1984, entered into force 26 June 1987) 1465 U.N.T.S. 85 (UNGA); Sierra Leone signed on 18 Mar 1985 and ratified on 25 Apr 2001. [Hereinafter **Convention against Torture/ CAT**]

[408] International humanitarian law also prohibits torture in armed conflict but does not provide a definition of the prohibition. Such a definition can instead be found in article 1(1) of the **1984 Convention against Torture**, ibid.

[409] Art. 7; Sierra Leone ratified the **ICCPR** on August 23, 1996.

[410] Art. 31.

[411] Art. 5.

[412] Art. 5.

[413] **ICCPR**, art. 2 (3) (a); **Convention against Torture**, articles 1 & 16.

[414] Article 37 protects the child from sexual exploitation and sexual abuse; Sierra Leone signed on 13 February 1990 and ratified on 18 June 1990.

[415] Nigel S. Rodley, UN Commission on Human Rights, *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,* (12 January 1995) UN Doc E/CN.4/1995/34, para. 19.

[416] *Prosecutor v Furundžija* (Judgment) ICTY- IT-95-17/1-T (10 December 1998), para. 171.

[417] *Akayesu's case*, n 384, para. 687: 'Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.'

The prohibition of torture is '…one of the most universally recognized human rights' and 'has attained status as a *jus cogens* or peremptory norm of general international law.' It also gives rise to the obligation *erga omnes,* an obligation owed to, and by all States to take action against those who torture.[418] As such, the prohibition is not subject to derogation, even in times of war or emergency.[419] The **Committee against Torture** has at various times observed that the long-established *jus cogens* prohibition of torture should not be subjected to any condition of legality or statute of limitation.[420] Cruel, inhuman, or degrading treatment or punishment is also usually prohibited in international instruments that forbid torture, and the principle of non-derogability also applies.[421] So, amnesty provisions that preclude taking action against perpetrators of torture and cruel, inhuman or degrading (CID) treatment, or ill-treatment violate the principle of non-derogability of the prohibition of torture.

An analysis of the relevant provisions of the various treaties mentioned above shows that the right to freedom from torture includes the State's duty to prosecute torturers. While the **Convention Against Torture** specifically prohibits amnesty for torturers, without specific reference to amnesty,[422] a few treaties emphasize the duty of the contracting parties to punish violations of the enshrined rights,[423] but others are silent on the duty to punish.[424] For instance, the **1981 African Charter** does not explicitly require state parties to prosecute or punish violations of rights set forth therein.[425] However, there is an implied duty to prosecute.

This would be a correct interpretation of the relevant provisions of **1981 African Charter**, as article 1 provides that State parties shall recognise the rights, duties and freedoms enshrined in Chapter I and shall undertake to adopt legislative or other measures to give effect to them.[426] The ACHPR has in *Commission Nationale des Droits de l'Homme et des Libertés* v *Chad* interpreted article 1 to mean, *inter alia*, that a state violates the Charter where it neglects to ensure the

---

[418] An obligation owed to and by all States to act against those who torture, see **Convention Against Torture**, arts. 5 (2) & 7 (1).

[419] ICCPR, art. 4(2) forbids derogation even in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.

[420] See e.g. CAT/C/SLE/CO/1, 2014, n 339, paras. 9 and 10.

[421] UN CAT,' General Comment No. 2: Implementation of Article 2 by States Parties' (24 January 2008) UN Doc CAT/C/GC/2.

[422] Art. 4 (1).

[423] **ICCPR,** arts 2(2) & (3)**;** art. 8(2), **2004 Arab Charter on Human Rights** (adopted 22 May 2004, entered into force 15 March 2008) prohibit and punish torture.

[424] These include the **UDHR**, **African Charter**, and **CRC**.

[425] Article 5, **African Charter**, for example, prohibits 'All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment…'

[426] **African Charter**, art. 1, see also the Preamble to the **UDHR** which refers to 'inalienable' rights and to the 'inherent' dignity of human beings and art. 19 **CRC**.

rights guaranteed therein, 'even if the State or its agents are not the immediate cause of the violation.'[427]

The ACHPR's interpretation is supported by several commentators. Tejan-Cole, for example, asserts that the **African Charter**'s affirmative obligations imply a duty to bring to justice those responsible for violations of its provisions.[428] Similarly, Orentlicher notes that the authoritative interpretation of such treaties[429] is unequivocal on the duty of state parties to investigate violations and seek to punish those who are responsible.[430] She further asserts that a state's failure to punish repeated and notorious violations breaches the customary obligation to respect the pre-eminent rights.

So, despite the amnesty provisions, Sierra Leone is obliged under both IHL and international human rights law to prosecute the perpetrators of forced marriage. Not doing so, I argue, amounts to failure to hold perpetrators of sexual violence accountable under national law or refer the matter to a competent court, in line with the **Hague Principles on Sexual Violence**. Thus, the Amnesty provisions promoted sexual violence, and did not ameliorate but contributed to the harms women experienced during and after the war. This is an example of lack of respect for women's human rights in rural Sierra Leone, which is key to the harms women experienced before, during and after the war.

3.9.1. Freedom from Discrimination

The fourth in the acts of omission on the list of the Hague Principles on Sexual Violence is 'the adoption of discriminatory laws fostering or allowing impunity for the perpetrator, including through law sentences or allowing a perpetrator to escape justice through marriage to their victim'. Examined under the heading 'Freedom from Discrimination', the focus will be on discriminatory laws and practices that promote impunity for the perpetrators of forced marriage, and not discrimination against women in general.

Women in the rural areas form majority of women in Sierra Leone. Most of the Bush wives live in rural areas and are therefore subject to several harmful traditional practices and negative customs and traditions that have adversely affected their rights and those of their children. The affected rights are areas of concerns for the UN and other human rights agencies. Rural women have always

[427] *Commission Nationale des Droits de l'Homme et des Libertés* v *Chad*, Comm. No. 74/92, para. 20, 1995–1996 Afr. Ann. Act. Rep., Annex VIII.
[428] Tejan-Cole, n 356, 251.
[429] See Diane F. Orentlicher, 'Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime' (1991) 100 Yale L.J. 2537
[430] Ibid.

faced discrimination and inequality in laws, custom, and rulings with little access to justice and limited rights in marriage, divorce, inheritance, and property.

Expectedly, the **CEDAW Committee** is 'especially concerned about the precarious situation' of such women, as they are 'disproportionately affected by poverty and a lack of adequate health services, education, economic opportunities, including credit facilities, and access to justice.'[431] The precarious situation is mainly because customary law is the personal law of rural dwellers. Customary law with its patriarchal foundation promotes harmful traditional practices, such as early / forced marriages, and similar customs and traditions that adversely affect women's equality and advancement. If the consequences are deemed devastating,[432] the post-conflict experiences of the Bush wives of rural Sierra Leone must be destructive. The lived experiences of rural women have 'entrenched many in poverty, forced some to stay in violent relationships, contributed to homelessness, and severely compromised the women's ability to care for or themselves, and their children.'[433] It is therefore not surprising, that some Bush wives returned to their ex- abductor husbands.

The marked difference between the lived experiences of women subject to customary law and those who are not is aptly illustrated in the 2010 decision of the Sierra Leone Court of Appeal in the case of *Jalloh* v *Turay*.[434] It is also evidence that despite the passing of the 'gender justice laws', women married under customary law still face the kind of discrimination not experienced by women married under general law. The Court noted that while a wife married under general law could insist that the matrimonial home be sold after a divorce, a wife married under customary law does not have the same rights. Unlike the former, she remains in the house only if permitted by her ex-husband.

In this unusual case, the couple married and divorced twice, under customary law. The man built the house after the first divorce but before the second marriage. They lived together in the house during the second marriage, but the woman refused to leave the house after the second divorce, claiming that she had contributed to its building. In determining the status of a divorced wife in the matrimonial home, the Court took cognizance of the position under customary law. It noted, inter alia, that:

> *In customary law there is a consensus among tribes that the husband owns the matrimonial home absolutely if he acquired it without the*

[431] CEDAW/C/SLE/CO/5, 2007, n 54, para. 36.
[432] Amnesty International, 'Sierra Leone: The Implementation of Key TRC Recommendations: Priorities in 2008 and Beyond' (AI 2008) 3.
[433] Ibid.
[434] [2010] SLCA 11.

"contribution" of the wife; but that the wife has an interest in it inferior to that of the husband even if they both contributed equal shares to it acquisition. Whether or not she contributes to it, a customary-law-wife resides at the matrimonial home at the pleasure of her husband. If she is driven away by the husband or the marriage comes to an end and she cannot stay in the house, she can claim compensation for any financial "contribution" which she made towards its acquisition. But in my view, she cannot insist on the house being sold and the proceeds divided, as would a wife married under the general law.[435]

Obviously, even the judiciary discriminates against women and lacks respect for women's human rights in rural Sierra Leone, which is key to the harms women experienced before, during and after the war. The judgement is in accord with the customary law of Sierra Leone, as confirmed by Joko Smart. He states that if a wife through her personal efforts contributed to the acquisition of the house and not financially, she is entitled to nothing. On the other hand, even if she contributed towards the acquisition of the home, the compensation granted to her may not be equivalent to her contribution.[436] As Ní Aoláin correctly asserts that the legal attention and regulation given to women's experiences of harm only serve, in practice, to affirm their secondary and disjunctive status in society.[437]

Contrary to the express provisions of relevant international human rights treaties, and Sierra Leone's obligations to promote and protect women's human rights, I argue that the country failed to protect the Bush wives from harm. In discussing the country's failure, I will address areas that most affect the Bush wives, such as marriage, sexual violence, and discrimination against women in general. I will rely on the general recommendations and concluding observations of the relevant human rights committees to assess the effectiveness of the Sierra Leone's legal responses to the post-conflict experiences of the Bush wives.

3.9.2. Discrimination Against Women and the Constitution

Cognisant of the need for domestic laws to fully comply with the **Convention** and the Committee's general recommendations, in 2007[438] and again in 2014,[439] the **CEDAW Committee** called on Sierra Leone to amend or repeal of all discriminatory legislation. It focused particularly on section 27 (4) (d) of the **Constitution**, to ensure women enjoy *de jure* as well as substantive (de facto) equality.

Sections 15 and 27 (1) of the **Constitution** protect all persons against discrimination as follows: 'Subject to the provisions of subsection (4), (5) and (7)

[435] Ibid, 118, para. 2.
[436] See Joko Smart, n 115, 118.
[437] Ní Aoláin, n 292, 221.
[438] CEDAW/C/SLE/CO/5, 2007, n 54, paras. 10-13.
[439] CEDAW/C/SLE/CO/6, 2014, n 50, para. 11.

no law shall make provision which is discriminatory either of itself or in its effect.' These provisions, however, are subject to subsections (4), (5), and (7) of section 27. Section 27(4) states that the 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.' 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, section 27(4) allows customary laws to take precedence over the **Constitution**, thus clawing back the constitutional protections against discrimination that it purports to grant all Sierra Leonean women, particularly in the areas of marriage, divorce, and inheritance. Section 27 thus retrogressively legalizes the customary practices of adoption, marriage, divorce, burial, devolution of property on death or other interests of personal law. It also provides 'a vast loophole for legal discrimination against women in violation of Sierra Leone's international legal obligations.'[440] This is also clearly in conflict with the provisions of the **Constitution** that recognize gender equality as a fundamental human right, and in conflict with Sierra Leone's international obligations in respect of ratified international treaties on the subject matter.

Similarly, commenting on the legislative framework, the **Human Rights Committee** in 2014, expressed concerns about discriminatory provisions against women contained in the existing **Constitution**, in particular article 27 (4) (d).[441] The Committee recommended that the Constitutional review process be strengthened in order to expeditiously repeal or amend discriminatory provisions against women that are inconsistent with the Covenant, and to incorporate all rights enshrined in the Covenant.[442] Rather than repeal section 27 (4)(d), the government has enacted 'women friendly' laws which have been difficult to implement mainly because of the supremacy of this provision.

Definitely, section 27(4) conflicts with article 2(b) and article 2 of **CEDAW** and the **Maputo Protocol** respectively, which oblige State Parties to undertake appropriate legislative, institutional and other measures to eliminate all forms of discrimination against women. Article 2 (f) of **CEDAW** enjoins State Parties to: *'To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.'* Article 5 of **CEDAW** and the **Maputo Protocol** in its article 2 require States to commit themselves to modifying the social and cultural patterns of conduct of women and men through public education, information, and communication strategies. The

[440] Davies, n 128, 20.
[441] CCPR/C/SLE/CO/1, 2014, n 56, para. 9, contrary to **ICCPR**, arts. 2, 3 and 26.
[442] Ibid.

aim is to help eliminate harmful cultural practices and all other practices based on the idea of the inferiority or superiority of either of the sexes. Given the various UN human rights treaty monitoring bodies reports under consideration, obviously, Sierra Leone is unwilling and lacks the capacity to fully comply with its treaty obligations.

3.10. Discriminatory Practices in Customary Law

The subordinate position of women in rural Sierra Leone has in many respects created impunity for the perpetrators of forced marriage. By entering marital-type relationships with the Bush wives after the war, the perpetrators enjoy the benefits of customary law marriages, and more, without the attendant disadvantages. Behind the veneer of marriage, the duties and obligations of customary law marriages were imposed upon the Bush wives, without the attendant benefits.

These duties and obligations are recognized as obstacles to the realisation of women's rights and contribute to the impunity enjoyed by perpetrators. They include the inferior status of the female spouse, control over female sexuality: including duty to bear children,[443] and marital rape, as wives are expected to submit to their husband's sexual demands, difficulty in leaving the marriage;[444] and social acceptance of domestic violence. All these patriarchal practices are inextricably linked to the inferior status of women in general, and particularly the female spouse. The rights, duties, and status of wives in customary law marriages, for example, exemplify lack of respect for women's human rights in rural Sierra Leone and is key to the harms women experienced before, during and after the war.

3.10.1. The Inferior Status of the Female Spouse

Like most African women, women in Sierra Leone occupy subordinate positions.[445] However, as mentioned earlier, the roles of urban and rural women clearly differ[446] partly because of the stricter cultural conventions rural women face and the higher level of poverty in rural areas.[447] The customs of the tribes of rural Sierra Leone clearly define the status of men and women as dominant and

---

[443] Belair, n171, 551, 571, 573.

[444] Except for few reasons such as impotence or persistent cruelty, a wife who wants to divorce her husband must repay the consideration received by the wife's family. Inability or unwillingness by their families to repay therefore compels them to remain captive even in an unhappy or abusive marriage; see Joko Smart, n 115, 158-160; Fitnat Naa-Adjeley Adjetey, 'Religious and Cultural Rights: Reclaiming the African Woman's Individuality: the Struggle between Women's Reproductive Autonomy and African Society and Culture' (1995) 44 Am. U.L. Rev 1351, 1359; Belair, n 171, 574.

[445] Coulter, n 124, 59, 60-61

[446] Ibid, 58.

[447] See n. 144.

submissive respectively; while masculine and feminine traits are traditional and inflexible.[448]

Traditionally, men have power, prestige and privileges, by virtue of being male, while women are regarded as social inferiors and treated as minors. The position of women in society is akin to that of a minor because she remains under the guardianship of a man for life.[449] As a single woman she is under the guardianship of her father or the head of the family, if the father is absent.[450] The head of the family may be an uncle, an elder brother, or a grandfather.[451] When she marries, she comes under the guardianship of her husband.[452] At his death, her guardian is the head of the husband's family, and she is at the mercy of her deceased husband's family until she remarries.[453]

According to Thompson and Erez:

> *The fact that the 'native' women is deemed to be the property of some man (father, husband, or some other head of the family) has far reaching implications for a woman's interpersonal and sexual relations and rights, especially if she is married.*[454]

A husband, under customary law for instance, is not criminally liable for any form of physical or sexual victimization of his wife, except for homicide.[455] Although, a husband may escape criminal liability for physical or sexual victimization of his wife, he may be civilly liable for certain types of physical abuse or sexual misconduct, for which he is required to pay compensation to her family and fees to the tribal elders.[456] This patriarchal attitude that regards women as the property of some man - father, husband, or even the tribal elders conflicts with both local and international human rights; and was replicated during the war.

3.10.2. Control over Female Sexuality: Rape

African customary justice systems are patriarchal and tend to favour male disputants, especially in rape cases. Rape cases are not regarded as serious

---

[448] RB Thompson and Edna Erez, 'Wife Abuse in Sierra Leone: Polygamous Marriages in a Dual Legal System' (1994) 18(1) Int'l J.Comp.& Applied Crim.Just. 27, 29.
[449] Ibid.
[450] Ibid, Quoted in W. Hazou, The Social and Legal Status of Women: A Global Perspective (Praeger Pub. 1990) (as cited in Thompson & Erez, n 448, 29.
[451] Thompson and Erez, n 448, 29.
[452] Hazel M McFerson, 'Women and Post-conflict Society in Sierra Leone' (2012 13(1) Journal of International Women's Studies 46, 58, 59.
[453] Ibid; Davies, n 128, 19.
[454] Thompson and Erez, n 448, 29.
[455] Ibid.
[456] Thompson and Erez, n 448, 29; during wartime forced marriages, the Bush wives were also regarded as the property of their husbands, but they were subjected to far worse treatment than customary law wives usually experience in peace time. Furthermore, family members and other elders who usually intervene or act as mediators in marital disputes could not, due to the war, enforce normal customary law sanctions.

offences as they are dealt with through mediation or the 'family way.'[457] Thus, disputes are mostly settled in ways that would enable the rapist escape punishment, even where he is wrong, a consideration that is rarely accorded to their victims. It is believed that a woman rather than her rapist is guilty. Thus, whilst a rape victim is considered 'spoilt goods' and unfit for marriage, the rapist's reputation remains intact. He is even allowed to marry his victim, if she is unmarried.[458] This patriarchal attitude is linked to the absence of respect for women's human rights in rural Sierra Leone, and is key to the harms women experienced before, during and after the war.

Prior to the cessation of hostilities, the Committee on the Rights of the Child in 2000, was concerned at reports of 'commercial sexual exploitation and of widespread sexual abuse of girls within the family, within internally displaced person camps and within communities.'[459] Reiterating its previous concerns years later, the CRC expressed grave concern at 'the high incidence of sexual violence,[460] including rape and defilement in all settings, including in the family and in schools.'[461] The 'marked increase in rape, indecent assault and carnal abuse of children shortly after the civil war' has not lessened, as evidenced by the 2019 President's declaration of 'a State of Public Emergency over rape and sexual violence'; referred to earlier.[462]

The sheer impunity with which sexual violence occurs is alarming. I argue that it is impossible not to link the impunity for sexual violence today, with the amnesty granted perpetrators of forced marriage and sexual violence during the war. Also implicated is the low rate of reporting of sexual abuse and exploitation, due to a patriarchal attitude based on 'the reluctance of families and the general public to report such cases and the practice of parents accepting payment instead of reporting cases.'[463] This includes the 'automatic closing of cases following the withdrawal of complaints by victims of domestic violence.'[464] Impunity prevails

---

[457] See Chi Mgbako and Kristina Scurry Baehr, 'Engaging Legal Dualism: Paralegal Organizations and Customary Law in Sierra Leone and Liberia' in *The Future of African Customary Law* (CUP 2012) 170, 181; Bintu Conteh and Regina Pratt, 'Sierra Leone: Seeking Justice for Rape Survivors' (IWPR 8 Aug 2016).

[458] Nirit Ben-Ari and Ernest Harsch 'Sexual Violence, an "Invisible War Crime": Sierra Leone Truth Commission Condemns Abuse, Discrimination' *Africa Renewal* January 2005 < https://www.un.org/africarenewal/magazine/january-2005/sexual-violence-invisible-war-crime > accessed 12 October 2022; see also n 316.

[459] CRC/C/15/Add.116, 2000, n 237, para. 87.

[460] See CRC/C/SLE/CO/2, 2008, n 50.

[461] CRC/C/SLE/CO/3-5, 2016, n 50, para. 20(a).

[462] Amnesty International, 'Sierra Leone: Rape and Murder of Child must be Catalyst for Real Change' 23 June 2020 @ https://www.amnesty.org/en/latest/news/2020/06/sierra-leone-rape-and-murder-of-child-must-be-catalyst-for-real-change/ accessed 1 July 2021, see also n 331.

[463] CRC/C/SLE/CO/3-5, 2016, n 50, para. 20(a).

[464] CCPR/C/SLE/CO/1, 2014, n 56, para. 15.

when rape victims are forced to marry their rapists;[465] when abductors are free to 'marry' their victims, and perpetrators receive 'lenient treatment from the Police.'[466]

3.10.3. Control over Female Sexuality: Duty to Bear Children

The procreation of children is one of the primary purposes of most African marriages. The notion of marriage founded on western type romantic love hardly survives a childless marriage. As a South African woman in a study by Van der Vliet rightly observed:

> *When he wants to marry you he tells you all sorts of lies. "You'll be my equal, I'll be faithful to you" and all that, and you think, "This is the man I must marry!" The minute you put the rings on-hunh! -the trouble starts. . .. What you are expected to do when you are a woman is to be a housewife and give birth to children. In fact, that's the main thing when they marry, they always think about how this woman will give birth to many children for the sake of our family name and to increase the whole clan.*[467]

In Africa, there is 'a deeply rooted moral and cultural matrix that defines children in terms of intrinsic wealth and as a social good…'[468] For African women, through marriage a girl goes to her husband's house and is blessed if she 'fills' it with children. This according to Nwapa explains the significance of the almost constant theme of marriage and barrenness in African women's writings. She observes that 'A wife is more often than not betrayed and abandoned by her husband if she does not have a child.'[469] She adds that 'motherhood is idealized and claimed as strength by African women and seen as having a special manifestation in Africa.'[470]

Not having children in marriage is viewed with great dissatisfaction in many African societies. As Fortes argued, it is *'parenthood that is the primary value associated with the idea of family in West Africa,'* and it *'is regarded as a sine qua non for the attainment of the full development of the complete person to which all aspire.'*[471] Similar views were stated by Smith: *'Having children is not only a means to individual personhood, but also a fulfillment of one's obligations to kin and community.'*[472] Few

[465] Ben-Ari and Harsch, n 458.
[466] CCPR/C/SLE/CO/1, 2014, n 56, para. 15.
[467] Virginia Van der Vliet, 'Traditional Husbands, Modern Wives? Constructing Marriages in a South African Township' (1991) 50 (1-2) African Studies 219, 236.
[468] Alicinda Filip de Boeck and Alcinda Honwana, 'Introduction: Children and Youth in Africa' in Alcinda Honwana and Filip de Boeck (eds), *Makers & Breakers: Children and Youth in Postcolonial Africa* (African World Press 2005) 10.
[469] See Nwapa, n 197, 531.
[470] Ibid.
[471] Meyer Fortes, 'Parenthood, Marriage and Fertility in West Africa' (1978) 14(4) Journal of Development Studies 121, 125.
[472] Daniel Jordan Smith, 'Romance, Parenthood, and Gender in a Modern African Society' (2001) 40(2) Ethnology 129, 139.

problems, Smith asserts, are more threatening to a marriage than infertility. While infertility is more often blamed on the woman, both men and women can be socially excused for terminating a marriage with an infertile partner. High societal expectation usually compels childless couples to seek traditional and modern remedies for infertility, failing which they separate or divorce, or resort to having children through the 'back door'. For example, infertile men sometimes allow their wives to get pregnant by another man, claiming such children as their own.[473] The denial of children in radical Western feminism stands in opposition to pro-natal African feminism. In African feminism, this motherhood-focus context excludes homosexuality that is warmly embraced in Western feminism.

Like most Africans, Sierra Leoneans love children, and the importance of children is linked to their utility, especially the social security function when the parents are old.[474] A farmer with many wives ends up having many children who expand the farm labor force. Initially, it is an expensive investment of sorts, which eventually yields valuable returns in the form of a large and diverse labor pool, bride wealth for his daughters, and by creating new and strategic alliances with other families through marriages.[475]

While the purpose of the Khmer Rouge's arrangement of forced marriage in Cambodia was clearly procreation, it is uncertain if this was a major consideration among the bush husbands in Sierra Leone. However, the fact that many young men experienced difficulties in getting married and starting a family before the war, makes marriage and procreation a probable reason for abducting young women.[476] This view is supported by several scholars. The Humphreys-Weinstein study showed that most of the combatants were from impoverished rural backgrounds;[477] while Richards suggests that the RUF [and other fighting groups] intentionally targeted the bottleneck in rural marriage.[478]

Given that a 'historical monopoly of female marriage partners by male land-owning elites'[479] made marriage prohibitive for rural young men, access to

[473] Smith, ibid, 149.
[474] Hilary Page, 'Childrearing versus Childbearing: Co-residence of Mother and Child in Sub-Saharan Africa' in Ron J. Lesthaeghe (ed.), *Reproduction and Social Organization in Sub-Saharan Africa* (Univ. of California P. 1989) 401, 442-444; John C Caldwell and Pat Caldwell, 'New Light on the Sub-Saharan African Fertility Transition: Conclusion' Samuel Agyei-Mensah and John B Casterline (eds), in *Reproduction and Social Context in Sub-Saharan Africa* (Greenwood P. 2003) 187, 188; Bledsoe, n 251, 3.
[475] Bledsoe, n 251, 51-52; Ester Boserup, 'Economic and Demographic Interrelationships in Sub-Saharan Africa' (1985) Population and Development Review 383, 385-386.
[476] Macartan Humphreys and Jeremy Weinstein, 'What the Fighters Say: A Survey of Ex-combatants in Sierra Leone: June-August 2003, Interim Report: July 2004 < https://macartan.github.io/assets/pdf/papers/2004_What_the_fighters_say.pdf > accessed 13 November 2022, 27.
[477] Ibid, 2; see also Richards, n 251, 574.
[478] Richards, ibid, 576.
[479] Richards et. al., 'Social Capital and Survival: Prospects for Community-driven Development in Post-conflict

marriage partners was 'undoubtedly a critical benefit of participation for some.'[480] For RUF recruits [and others], access to marriage partners undoubtedly topped the list of promised individual benefits of jobs, money and food.[481] I will argue that excluded from an adult status by their financial incapacity to formally marry and raise children, young men in Sierra Leone took to arms, saw abduction of girls and young women as a means of achieving this end. The continuing marriages that took place after the war were replicas of the conflict forced marriages.

3.10.4. Bush Wives and the Disarmament, Demobilization and Reintegration Programme

Another act of sexual violence by Sierra Leone is its failure to guarantee remedies and assistance to survivors, according to the Hague Principles on Sexual Violence.[482] Despite the government's obligation to provide remedies and assistance to survivors and repeated requests from civil society, based on the recommendations of the SL TRC, women survivors were left out. As discussed earlier, the DDR programme and various other development initiatives focused almost exclusively on male child soldiers and male ex-combatants.[483]

Males received assistance with training and skills necessary for reintegration. Thus, they were more readily accepted back into their communities, as they could contribute resources and skills to the development of society. This was one of the major concerns addressed in workshops and consultations because of the numerous programmes established to assist former combatants and perceived perpetrators.[484] The Women's Forum response to the TRC questionnaire noted that:

> *Reconciliation should not be one-sided, especially in terms of satisfying the needs of perpetrators at the expense of victims. Government should take a decisive action to ensure that all parties' needs are met.*[485]

In post-conflict Sierra Leone, reintegration was therefore easier for ex-combatants because of their ability to bring resources back to the household,

---

Sierra Leone' Social development papers. Conflict Prevention and Reconstruction Series; No. CPR 12 (World Bank Group 2004) 3.

[480] Nearly a quarter of RUF respondents admitted 'receiving wives (or husbands)' after military operations, see Humphreys and Weinstein, n 476, 27.

[481] Richards, n 251, 576.

[482] Hague Principles, n 103, 51.

[483] See Denov, n 267, 161-162; Okolie-Osemene, n 267, 3b (3) TRC Report, n 116, para. 215.

[484] *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Chapter 7: Reconciliation) (Volume 3B, Graphic Packaging Ltd. GCGL 2004) 488.

[485] Ibid.

particularly if they had established livelihood.[486] Reintegration for female returnees was far more difficult because, as mentioned earlier, unlike the young men who received training, skills or education, women were usually only eligible for micro-loans from NGOs.[487] Even the little money received was likely to be stolen or coerced from them by their husbands or male family members.[488] The emphasis on the reconciliation of male ex-combatants, who were perceived as more useful to society than women, led to further marginalization of these women. Female victims of sexual violence thus faced the double disadvantage of exclusion from the DDR programmes and rejection at home.

Furthermore, the implementation of the recommendations of the **SL TRC** for the rehabilitation and social reintegration of women and girls who were victims of the war has largely been unsuccessful.[489] The reparations programme established in 2008 to address the socioeconomic needs of women victims of sexual violence was not sustainable. This was a matter of concern for the Committee on CEDAW, which noted in 2014, its delay for lack of funds, and urged Sierra Leone *'to ensure that all potential beneficiaries of war reparation, in particular widows and women victims of conflict-related sexual violence, are adequately compensated without further delay.'*[490] Similarly, the establishment of a special fund for the rehabilitation of war victims provided for by the Lomé Peace Agreement was ineffective. The SL TRC had recommended that the Special Fund for War Victims be set up three months after completion of the TRC's report in 2004. The reparations fund to support reparations for victims of sexual violence remains inadequate.[491] The Committee on CEDAW also requests Sierra Leone to ensure war victims access full rehabilitation, reintegration into society and compensation through the reparation programme.[492]

In the rural areas, where most of the Bush wives live, access by women victims to medical care and psychological counselling remains poor. The Committee therefore urges the state to effectively implement all measures to facilitate women's affordable access to health care, especially in rural areas.[493]

---

[486] Rosalind Shaw, 'Linking Justice with Reintegration? Ex-Combatants and the Sierra Leone Experiment' in Rosalind Shaw et. al. (eds), *Localizing Transitional Justice: Interventions and Priorities After Mass Violence* (Stanford UP 2010) 111, 130.
[487] See n 267 & n 268.
[488] See n 268.
[489] CEDAW/C/SLE/CO/6, 2014, n 50, para. 12.
[490] Ibid, para. 36.
[491] Ibid, para. 12, 37 (c).
[492] Ibid, para. 13(d)
[493] Ibid, paras. 32(c), 33 (a) & (c), 34.

Unfortunately, no information was provided on the actions taken by the state to address the stigmatization of victims as requested by the Committee in 2013.[494]

On non-discrimination and equality between men and women, the CEDAW Committee in 2007, expressed deep concern about:

> *…the persistence of adverse cultural norms, practices and traditions and of patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life.*[495]

Concerned that *'such norms, customs and practices justify and perpetuate discrimination against women, including violence against women,'* the Committee notes the lack of sustained and systematic action by the State party to modify or eliminate such negative cultural values, practices, and stereotypes.[496]

Seven years later, in 2014, the Human Rights Committee repeats almost verbatim, the same concerns. The Committee was concerned about:

> *…the persistence of deep-rooted and negative patriarchal stereotypes regarding roles of women and men in the family and in society at large and that the State party should enhance its efforts to eliminate such.*[497]

The Committee on Economic, Social and Cultural Rights[498] and the HRC also view traditional gender roles, prejudices and stereotypes as barriers to the full enjoyment of women's social and economic rights.[499] Expectedly, in 2014,[500] the CEDAW Committee referred to its previous recommendation in 2007 in which it expressed concerns about norms, customs and practices that validate and encourage discrimination against women.[501] The CEDAW Committee also noted the absence of any sustained and systematic action by the State party to modify or eliminate such negative cultural values, practices and stereotypes.[502] It is pertinent to note here that while seeking to abolish negative cultural values, the CEDAW Committee views culture as *'a dynamic dimension of the country's life and social fabric, subject to many influences over time and therefore to change.'*[503]

---

[494] See UN Committee on the Elimination of Discrimination against Women, 'List of Issues and Questions in Relation to the Sixth Periodic Report of Sierra Leone' (2 August 2013) UN Doc CEDAW/C/SLE/Q/6, para. 9.
[495] CEDAW/C/SLE/CO/5, 2007, n 54, para. 20.
[496] Ibid.
[497] CCPR/C/SLE/CO/1, 2014, n 56, para. 10.
[498] [Hereinafter **CESCR**].
[499] For example, UN CESCR, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 16 (11 August 2005) UN Doc E/C.12/2005/4, para. 14; UN CCPR, CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women) (29 March 2000) UN Doc CCPR/C/21/Rev.1/Add.10, paras. 5 and 25.
[500] CEDAW/C/SLE/CO/6, 2014, n 50, para. 19.
[501] CEDAW/C/SLE/CO/5, 2007, n 54, para. 20.
[502] Ibid.
[503] Ibid, para. 21.

Furthermore, the HRC urges the State party to adopt programmes that raise awareness in society of gender equality, help eliminate such discriminatory practices and conduct.[504] Today, however, the situation has not changed significantly, as discrimination against women persist especially in rural Sierra Leone, as illustrated by the lived experiences of the Bush wives.

3.10.5. Social Acceptance of Domestic Violence.

The appropriate term to use in this context is 'Intimate Partner Violence' which refers to any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship.[505] However, the thesis will use the term 'domestic violence' because it is used in many countries, including Sierra Leone, to refer to partner violence.[506] The **Hague Principles on Sexual Violence** has broadly defined domestic violence to include acts of a sexual nature that may be regarded as inherently violent.[507]

Domestic violence is a global problem, a major public health issue,[508] and a human rights violation that affects women, families, and the society in general.[509] A 2021 WHO report stated that 'Globally, 30% of women have experienced physical and/or sexual violence by an intimate partner in their lifetime.'[510]

The high level of domestic violence is due in part to the pervasive patriarchal cultures of many societies.[511] In African societies and other parts of the world where this practice is prevalent, violence against women in the marriage setting

---

[504] See CCPR/C/SLE/CO/1, 2014, n 56, para. 10.

[505] Domestic violence is broader as it can also encompass child or elder abuse, or abuse by any member of a household, see WHO, 'Understanding and Addressing Violence against Women: Health Consequences' 11 November 2012 <https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf> accessed 25 March 2020.

[506] Ibid.

[507] Hague Principles, n 103, 38.

[508] WHO, n 505, 4; U. Abdullahi et. al., 'The Influence of Culture in Domestic Violence Against Women in Nigeria' (2017) 2 JISED 273; Ann L. Coker and Donna L. Richter, 'Violence Against Women in Sierra Leone: Frequency and Correlates of Intimate Partner Violence and Forced Sexual Intercourse' (1998) 2 African Journal of Reproductive Health 61.

[509] UN conventions, UN declarations, action plans and platforms from UN's world conferences, resolutions and recommendations from the CEDAW committee all explicitly state that domestic violence may be regarded as a violation of human rights; see also Government Offices of Sweden, 'Patriarchal Violence – an Attack on Human Security' (2006) < https://government.se/contentassets/87a9c5e22af14395aff3411dbd197f58/patriarchal-violence---an-attack-on-human-security/ > accessed 20 November 2022; see also Claudia Garcia-Moreno et. al., 'WHO Multi-Country Study on Women's Health and Domestic Violence Against Women: Initial Results on Prevalence, Health Outcomes and Women's Responses' <https://apps.who.int/iris/handle/10665/43309> accessed 25 March 2020.

[510] WHO, 'Violence Against Women' 9 March 2021 < https://www.who.int/news-room/fact-sheets/detail/violence-against-women#:~:text=Estimates%20published%20by%20WHO%20indicate,violence%20is%20intimate%20partner%20violence> accessed 20 November 2022.

[511] Garcia-Moreno et. al., n 509, 92, 97; see also Ceri Hayes, 'Tackling Violence Against Women: a Worldwide Approach' in Geraldine Terry and Joanna Hoare (eds.) *Gender-Based Violence* (Oxfam 2007) 7, 8; Government Offices of Sweden, n 509, 11, 20, 21.

is perceived as a private family affair, a matter of individual choice, or inevitable facts of life and women have been socialized into accepting it as such.[512] Domestic violence is a practice that promotes impunity for the perpetrator because under the Sierra Leone customary law a man is allowed to beat his wife if she 'misbehaves.' Interestingly, women do not have a problem with this discriminatory practice. In a 2002 PHR survey, 60% of women expressed the view that 'a man has the right to beat his wife if she disobeys.'[513] The apparent disparity between such beliefs and human rights' principles suggests a need for a comprehensive public awareness and education.

Domestic violence may be socially acceptable, but it is not encouraged when it is aggravated. In Sierra Leone, this harmful practice is criminalized by virtue of the Domestic Violence Act, 2007.[514] Under no circumstances does customary law allow or condone the intentional infliction of severe pain or suffering, whether physical or mental, on any person, as happened to the Bush wives in captivity. For this reason, persistent cruelty is a ground for divorce in customary marriages.[515] Dorjhan's narrative below aptly illustrates the nature of wife beating that is not socially acceptable:

> *...the youngest of three co-wives, a large, strong woman in her late 20's, verbally abused her slightly built husband in his late 50's. She did this so effectively that he took a heavy stick and set out to beat her in public. After letting him get in two swats, the wife took the stick away from him and commenced beating him. Her co-wives and by-standers did not intervene until the man was bleeding from the nose and had sustained a broken arm. Public sympathy was with the woman and against a husband who would beat his wife with a stick in public and got only what he deserved.*[516]

Admittedly, there is social acceptance of domestic violence, but as mentioned earlier, it is not encouraged, as there is a limit to the punishment a husband is expected to mete out to his wife. However, no matter how mild, feminists view domestic violence as 'the result of male oppression of women within a patriarchal system [the family] in which men are the primary perpetrators of violence and women the primary victims.'[517] Dobash and Dobash argue rightly, that patriarchy produces gender inequality in marriage and the family setting, and patriarchal

---

[512] Garcia-Moreno et. al., ibid, xiii, 39-42.
[513] PHR Report, n 165, 55.
[514] See sections 2(2) and 20 (4).
[515] Joko Smart, n 115, 159; Adjetey, n 444, 1359; Belair, n 171, 574.
[516] Dorjahn, n 254, 173; a question that arises from the above narrative is the human rights implications of a husband beating his wife with a stick in the privacy of their home.
[517] R. E. Dobash and R. P. Dobash, Violence against Wives: A Case against the Patriarchy (Free Press 1979) 12, 18; Gwen Hunnicutt, 'Varieties of Patriarchy and Violence Against Women: Resurrecting "Patriarchy" as a Theoretical Tool' (2009) 15(5) Violence Against Women 553; Jenny C. Tonsing and Karen N. Tonsing, 'Understanding the Role of Patriarchal Ideology in Intimate Partner Violence among South Asian Women in Hong Kong' (2019) 62(1) International Social Work 161.

norms are often are often linked to wife assault, and wife beating, which can be viewed as one form of men's exercise of control over women.[518] Impunity for domestic violence is also fostered by patriarchal norms, such as women's lack of access to the police, their economic situation (exorbitant fees are charged by medical officers and victims cannot afford the cost of a medical report which is essential for reporting and prosecuting domestic violence cases) and pressure to make out-of-court settlements.[519]

3.10.6. Domestic Duties as Conjugal Duties

Traditionally, a husband acquires certain rights over his wife with respect to domestic services. Wives have always represented access to unpaid work.[520] Like slaves, wives were regarded as property, and they shared the same kind of work.[521] . In his 1812 book 'From Slaves to Palm Kernels' Jones noted that eighteenth and nineteenth-century observers were struck by the amount of arduous work done by women, both in farming and in plastering houses, processing oil palm, salt-making and other non-domestic work.[522]

In the nineteenth century, Vai chiefs sometimes had between 20 and 40 wives, with a few having more than 100.[523] The reason for having so many wives was for their unpaid labour, as Jones observed: *'if you ask them why they have so many women they will tell you clearly they have them to work for them'.* Today, men do not marry many wives, but the duties of wives have hardly changed as the stereotypes which determine the roles of men and women in homes have remained the same. Gender role expectations within patriarchal societies have been criticized by several UN treaty bodies who view such practices as patriarchal in nature.[524] They urge the state to adopt programmes that seek to raise awareness in society of gender equality.[525] Feminists have also criticized gender roles in the society and homes.[526]

Performance of conjugal duties by wives in traditional marriages were replicated during the war. The men regarded the women they captured as 'wives' who were

---

[518] Dobash and Dobash, Ibid, 33, 45.

[519] A/HRC/WG.6/11/SLE/3, 2011, n 320, para. 25.

[520] See Sarah Bibler and Elaine Zuckerman, 'The Care Connection: The World Bank and Women's Unpaid Care Work in Select Sub-Saharan African Countries', No. 2013/131, (WIDER Working Paper 2013) 2, 4; Dorjahn, n 255, 372, 373.

[521] Richards, n 251, 581.

[522] Quoted in Ibid, 582 (as cited in Adam Jones, '*From Slaves to Palm Kernels: A History of the Galinhas Country (West Africa), 1730-1890*' (F. Steiner 1983)189.

[523] Richards, n 251, 582.

[524] See CEDAW/C/SLE/CO/6, 2014, n 50, para. 18 (a); CCPR/C/SLE/CO/1, 2014, n 56, para. 10.

[525] Ibid.

[526] See Javier Cerrato and Eva Cifre, 'Gender Inequality in Household Chores and Work-Family Conflict' (2018) 9 Front. Psychol. 1; Paula England, 'The Gender Revolution: Uneven and Stalled' (2010) 24(2) Gender & Society 149; Stephanie Seguino, 'Plus Ça Change? Evidence on Global Trends in Gender Norms and Stereotypes' (2007) 13(2) Feminist Economics 1.

expected to perform all the conjugal duties associated with such relationships. Both the SCSL and ICC Chamber found 'domestic duties' as duties that are associated with marriage and part of the 'conjugal duties' expected of a wife.[527] The SCSL's definition of forced marriage acknowledges the conjugal duties of a wife to include domestic chores such as cleaning and cooking.[528] This reasoning is not universal and Toy-Cronin rightly contends that it is a patriarchal gender stereotype definition of conjugal duties.[529] Especially, given that some men, for example, stay at home, perform domestic duties, including taking care of the children while their wives go out to work. Furthermore, men who are victims of forced marriage, and even some female victims**,** may not be expected to perform domestic duties.

3.11. Efforts to Combat Discrimination Against Women

In recognition of the importance of addressing the discrimination and sexual violence that women face in rural Sierra Leone, the SL TRC, like the treaty bodies recommended, *inter alia,* the repeal of discriminatory provisions of the constitution and the enactment of laws to strengthen women's human rights. The international reconstruction effort in Sierra Leone after cessation of hostilities in 2001 created an opportunity to address this concern and advance women's human rights. Its achievements however, fell short of expectations.

Significant improvements in legal protections emerged through the enactment of new laws, amendment of discriminatory laws, the establishment of legal aid organizations and Family Support Units in police stations, and the training of female lawyers, prosecutors, and judges. In addition, the efforts of nongovernmental organizations and some governmental bodies in the areas of legal aid and legal reforms have had significant impact in increasing access to justice for women.

The three Gender laws passed in 2007, namely: the **2007 Domestic Violence Act**; the **2007 Devolution of Estates Act**; and the **2009 Registration of Customary Marriage and Divorce Act** are notable examples. The **Devolution of Estates Act** protects women in terms of land and estate inheritance if her spouse dies intestate, allowing rural women greater access to property, while the **Registration of Customary Marriage and Divorce Act** provides a framework for registering customary marriages and divorces, offering further economic and legal protection for women. The Act can help to improve the status of women in rural Sierra Leone allowing them greater rights in marriage, that will make it

[527] Ibid, n 181, para. 92.
[528] AFRC Appeal Chamber J, n 176, paras. 190-193, 199-200.
[529] Bridgette A. Toy-Cronin, 'What Is Forced Marriage-Towards a Definition of Forced Marriage as a Crime against Humanity' (2010) 19 Colum. J. Gender & L. 539, 571, 580; see also Oosterveld, n 126, 158.

easier for them to leave abusive relationships. The two others have been discussed in extensively in chapters 2 and 3.

Unlike previous laws, the new laws significantly improved access to justice for women, but despite additional efforts like the National Action Plan on the implementation of the gender laws set up by a coalition of NGOs, UN agencies and donors,[530] gaps exist, as discussed in the previous sections. In 2016, for example, the UN Committee on the Rights of the Child reiterated its 2008 concerns[531] regarding:

> *...the high incidence of sexual violence, including rape and defilement in all settings, including in the family and in schools [and] the low rate of reporting of sexual abuse and exploitation, especially owing to the reluctance of families and the public to report such cases and the practice of parents accepting payment instead of reporting cases.*[532]

The 2007 CEDAW Committee's concerns about the precarious situation of women in rural areas, who are '…disproportionately affected by poverty… lack of adequate health services, education, economic opportunities, including credit facilities, and access to justice,'[533] is instructive. This means that the effect of these gaps is more pronounced in rural areas where the Bush wives live. These gaps expose the limitation of law in addressing women's experiences during conflicts and post-conflict and has for long been the subject of dominant discourses by feminists.[534] It also shows the failure of the domestic regulatory framework to ameliorate the harm(s) the Bush wives suffer post-conflict. A combination of these issues shows that lack of respect for women's human rights in rural Sierra Leone is key to the harms women experienced before, during and after the war.

3.12. International Law and States' Obligations to Protect Women's Human Rights in Conflict

The UN is the only collective expression of universal humanity.[535] The UN is responsible for promoting and protecting internationally recognised human rights

---

[530] Amnesty International, n 432, 3.
[531] See CRC/C/SLE/CO/2, 2008, n 50, para. 72.
[532] CRC/C/SLE/CO/3-5, 2016, n 50, para. 20.
[533] CEDAW/C/SLE/CO/5, 2007, n 54, para. 36.
[534] Fionnuala D. Ní Aoláin, 'Advancing Women's Rights in Conflict and Post-Conflict Situations.' (2010) 104 Proceedings of the ASIL Annual Meeting 568–570; Monica McWilliams and Fionnuala Ní Aoláin "'There is a War Going on You Know': Addressing the Complexity of Violence Against Women in Conflicted and Post Conflict Societies" (2013) 1(2) Transitional Justice Review 1; Niamh Reilly, 'Seeking Gender Justice in Post-Conflict Transitions: Towards a Transformative Women's Human Rights Approach' (2007) 3 (2) Int. J.L.C. 155; Tim Murithi, 'Advancing Transitional Justice in Post-conflict Societies in Africa' (2018) 5(3) African Journal of Democracy and Governance 103.
[535] Stephen J. Toope, 'Does International Law Impose a Duty upon the United Nations to Prevent Genocide?' (2000) 46 Mcgill L. J. 187, 190.

around the world. The UN is built on the understanding that peace needs to be secured, *inter alia*, by the realisation of human rights.[536] In the 1944 Dumbarton Oaks Proposals, the introductory sentence of Chapter IX reads:

> *'With a view to the creation of conditions of stability and well-being…, the Organisation should facilitate solutions of international economic, social and other humanitarian problems and promote respect for human rights and fundamental freedoms.'*

In the Charter, Article 1 (3) states that the UN's purpose *inter alia,* is *'to achieve international co-operation in solving international problems of … humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms…'*

Furthermore, Art. 13 (1) b which provides for the functions and powers of the General Assembly include *'promoting international co-operation…and assisting in the realisation of human rights and fundamental freedoms for all…'* Finally, Article 56 of the Charter obliges member States *'to take joint action in co-operation with the Organisation for the achievement of the purpose set forth in Article 55.' This calls for a 'universal respect for, and observance of human rights and fundamental freedoms for all…'* These and other provisions[537] establish a strong link between human rights and peace. [538] The protection of human rights is thus equated with the maintenance of international peace and security.[539] This view was vigorously defended in Kofi Annan's plea to the General Assembly in 2000:

> *If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights?*[540]

Under article 24 (1) of the UN Charter,[541] human rights concerns fall within the jurisdiction of the Security Council. Under Chapter VII, the Security Council has the sole prerogative to order enforcement measures and the discretion as to the type of measures to be taken, to maintain peace, including protection of human

---

[536] Bruno Simma *et. al.*(eds.) *The Charter of the United Nations: A Commentary* (3rd ed, OUP 2012) 1537.

[537] Articles 62 (2), 68 and 76 (c) and the Preamble also give the UN the power to address human right questions and oblige the Organisation and member States to show respect for and to observe human rights. According to J Humphrey, human rights references pervade the UN Charter like a 'golden thread', Quoted in J. Humphrey, 'No Distant Millennium: the International Law of Human Rights' (UNESCO 1989) (as cited in Simma *et al.*, ibid, 1569.

[538] Simma *et al.*, ibid, 1539; See also Natalino Ronzitti, *Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity* (Martinus Nijhoff 1985) 7, who argues that member States have the power and duty, under Chapter IX, to intervene to restore human rights.

[539] For the debate on the legality of the UN humanitarian intervention in internal human rights violations occurring within a country, see JL Brierly, 'Matters of Domestic Jurisdiction' (1925) 6 British Yrbk Int'l L. 18-19; see also James Crawford, *Brownlie's Principles of Public International Law* (8th ed, OUP 2012) 296; R. Bernhardt, 'Domestic Jurisdiction of States and International Human Rights Organs' (1986) 7 HRLJ 205; Katariina Simonen, 'The State versus the Individual : the Unresolved Dilemma of Humanitarian Intervention' (Martinus Nijhoff 2011) 5.

[540] Kofi A. Annan, *We the Peoples: the Role of the United Nations in the 21st Century* (UN 2000) 48.

[541] See also Toope, n 535, 191.

rights. [542] In practice, the Council has made use of Chapter VII in non-traditional ways such as *'the creation of international criminal tribunals, international territorial administration, broader regulatory efforts as well as outright legislation.'*[543]

Forced marriage is one of the most heinous crimes committed against young women and girls during conflicts, and undoubtedly violates fundamental human rights. Whether the action of individuals[544] or a state policy,[545] forced marriage in conflict situations is a violation of international humanitarian law and international human rights law. Preventing forced marriages during and after conflicts falls directly within the jurisdiction of the UN, by virtue of article 24 (1) of the UN Charter. The focus of this section will be limited to the UN's regulatory efforts and legislation to curb sexual and gender-based violence in general and forced marriage in conflicts, and the tradition of impunity for perpetrators. My argument is that international regulatory frameworks did not ameliorate but contributed to the harms the Bush wives, survivors of forced marriage experienced during and after the Sierra Leone war.

In the past, the focus of international law has been on violence against women occurring within the family and in society, in non-conflict situations.[546] It is remarkable that prior to the 1995 Beijing conference, important human rights documents on women's rights like the 1979 CEDAW, did not specifically address forced marriage and sexual violence against women during armed conflicts. Widely regarded as an international bill of rights for women, CEDAW consists of a preamble and 30 articles, and defines what constitutes discrimination against women. Articles 16 (1) (b) and 16 (2) are in line with, and replicate provisions on forced marriage already in earlier human rights instruments.[547] For instance, article 16 (1) (b) provides for freedom of choice and 'free and full consent' of the parties, while article 16 (2) prohibits child marriage and betrothal of children.

---

[542] Sarooshi claims both determinations to be political in character, see Danesh Sarooshi, *The United Nations and the Development of Collective Security* (OUP 1999) 3, 4. For what happens when the UN fails or is slow to act, see Hans Kelsen, *The Law of the United Nations: a Critical Analysis of its Fundamental Problems* (Stevens 1950) 732-737.

[543] Simma *et al.*, n 536, 1243.

[544] As happened in Sierra Leone, Liberia, and the Democratic Republic of Congo, see AFRC Appeal Chamber J, n 176, para. 202; Neha Jain, 'Forced Marriage as a Crime against Humanity: Problems of Definition and Prosecution' (2008) 6 (5) J Int Criminal Justice 1013, 1022-1025; Khristopher Carlson and Dyan Mazurana, 'Forced Marriage Within the Lord's Resistance Army, Uganda' (Feinstein International Centre 2008) 4.

[545] As in Cambodia, see Jain, ibid, 1024-1026; Judy Wong Pik Yuk and Jessie Fong Ho Yee, 'Sexual Intercourse as Rape under the State Policy of Forced Marriage: A Crime against Humanity' (2010) 2 City U. H.K. L. Rev 161.

[546] For example, the UN Economic and Social Council's relevant resolutions on violence against women neither referred to sexual based violence nor violence against women occurring in conflict situations, see UN ESC, 'Efforts to Eradicate Violence Against Women Within the Family and Society' (26 May 1988) 1988/27 and UN ESC, 'Violence Against Women in all its Forms' (30 May 1991) UN Doc 1991/18. See UN, Report of the World Conference, n 2, paras. 137, 258, 288.

[547] **UDHR**, art.16(2).

Article 2 enumerates measures State Parties are to take to eliminate all forms of discrimination against women. Articles 2 and 16 are considered by the Committee on the Elimination of All Forms of Discrimination against Women to be core provisions of the Convention.[548]

Although article 28 (2) prohibits reservations incompatible with the object and purpose of the Convention, in line with the customary international law, codified in the **1969 Vienna Convention on the Law of Treaties**,[549] several countries have entered reservations on both articles. The basis for the reservations includes inconsistency of national law, tradition, religion, or culture with Convention principles. The Committee encourages and considers the removal or modification of reservations, particularly to articles 2 and 16, an indication of a State party's commitment to end discrimination in all forms.[550] It is instructive that the practice of forced and child marriages is still prevalent in most of the states with reservations on article 16 as a whole or relevant parts.[551] Interestingly, though these practices exist in Sierra Leone, it has not entered any reservations to the core international human rights laws, so this issue is not relevant in our discussion.

Moreover, article 6 urges states parties to take appropriate measures against all forms of traffic in women and exploitation of women. The Committee was not consistent in its interpretations of the scope of Article 6 vis-à-vis the issue of prostitution, for example.[552] The phrase 'all forms of traffic in women' can also be interpreted to include forced marriage. The possibility that at the time **CEDAW** was adopted in 1979, the issue of forced marriage was not widely known is a tenuous argument.[553]

Furthermore, though incidences of forced marriages were reported as common occurrences during the two decades of armed conflict in northern Uganda[554] and

---

[548] UN Women, 'Reservations to CEDAW' < https://www.un.org/womenwatch/daw/cedaw/reservations.htm#> accessed 23 December 2014.
[549] This is in line with the impermissibility principle contained in **1969 Vienna Convention on the Law of Treaties**, art. 19 (c).
[550] UN Women, n 548.
[551] As of 23 December 2014, full reservations on article 16 - Algeria, Bahrain, Egypt, Iraq, Israel, Maldives, Micronesia (Federated States of), United Arab Emirates; partial reservations on art. 16 (1) – India; on art. 16 (1) (a) - Oman, Malaysia, Qatar and Singapore; on art. 16 (2) - India, Malaysia, Singapore and Syrian Arab Republic. See generally UN Treaty Collection < https://treaties.un.org > accessed 23 December 2020.
[552] Janie Chaung, 'Article 6' in Marsha A. Freeman et. al. (eds) *The UN Convention on the Elimination of all Forms of Discrimination against Women: A Commentary* (OUP 2012)169, 173.
[553] Ibid.
[554] The Lord's Resistance Army (the LRA) started fighting the Government of Uganda since the mid-1980s, and 'systematically targeted and abducted females, in part, for the purpose of forcibly marrying them to commanders and fighters' before they were chased out of Uganda. See Carlson and Mazurana, n 544; the LRA is currently operating in the border region of the Democratic Republic of the Congo (DRC), the Central African Republic (CAR), and South Sudan; see Ikwebe Bunting, 'Lord's Resistance Army' *Encyclopaedia Britannica* (21 July 2023) <https://www.britannica.com/topic/Lords-Resistance-Army> accessed 11 January 2023.

the Rwandan conflict, the failure of the **1993 Vienna Declaration and Programme of Action**[555] to refer to the crime was a grave omission. It is surprising that the inclusion of 'forced pregnancy' among violations requiring a particularly effective response did not draw attention to the issue of forced marriages. The likely explanation for the inexcusable omission on the part of the drafters, is the disproportionate attention usually paid to other forms of 'public' sexual violence and gender-based crimes, such as rape and sexual slavery.

In the mid-1990s, to further improve the situation of women, calls were made for the recognition of women's rights as human rights during the 1993 Vienna World Conference on Human Rights[556] and reiterated at the 1995 Fourth World Conference on Women, Beijing.[557] During these conferences, hitherto ignored women's experiences of armed conflict was highlighted. The 1993 World Conference on Human Rights, for example, was convened as a result of problems with ratification and compliance with the UN Charter, the UDHR, the Covenants, and other human rights instruments, and new forms of violation.[558] The Vienna Conference has been acclaimed as having contributed a great deal to the increased awareness of sexual violence against women in recent times.[559] The resultant Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights[560] placed 'unprecedented emphasis' on eliminating violence against women as a human right. Expressing deep concerns about the massive violations of human rights of civilians, the **1993 Vienna Declaration** restated that those violations of the human rights of women in situations of armed conflict, were violations of the fundamental principles of international human rights and humanitarian law.[561]

In the **1993 Vienna Declaration**, systematic rape, sexual slavery, and forced pregnancy were violations that require a particularly effective response.[562] It called for the punishment of perpetrators of such crimes and an immediate stop

[555] (adopted 12 July 1993) A/CONF.157/23 & A/CONF.177/20/Add.1 (UNGA) [Hereinafter the **1993 Vienna Declaration**].
[556] Ibid, para. 18 states: 'The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.'
[557] See n 2.
[558] Warren Allmand, 'The Vienna Declaration and Plan of Action: After Five Years' (1998) 11 Rev Quebecoise de Droit Int'l 119, 120.
[559] UN Commission on Human Rights, *World Conference on Human Rights*, (9 March 1994) UN Doc E/CN.4/RES/1994/95; Alice Priddy, 'The Situation of Women's Rights 20 Years after the Vienna World Conference on Human Rights' (Geneva Academy 2014) 7-8.
[560] Ibid.
[561] **1993 Vienna Declaration**, para. 38.
[562] Ibid.

to such practices,[563] and urged States to combat violence against women in accordance with its provisions.[564] Merely urging states to implement provisions of the **Declaration** is unlikely to be an effective mechanism of combatting violence against women. This is because declarations are non-binding, and it is a notorious fact that states lack the political will to implement conventions on women's rights. For example, the number of reservations on core provisions of **CEDAW**, show a lack of commitment by State parties to end all forms of discrimination against women.[565]

Other feminist gains in recent times include securing increased state obligations to prohibit and prevent private and public harms against women, as well as punishing both private and state actors who perpetrate violence against women.[566] In the preamble of the **1993 Declaration on the Elimination of Violence against Women** reference was made to women in situations of armed conflict, who are especially vulnerable to violence.[567] However, it was ten years later, that the **1995 Beijing Declaration** highlighted women's experience of armed conflict as a critical area of concern.[568] It regarded violations of the human rights of women in situations of armed conflict as violations of the fundamental principles of international human rights and humanitarian law, prohibited in international human rights instruments and in the **1949 Geneva Conventions** and the **Additional Protocols**.[569]

The **1995 Beijing Declaration** strongly condemned massive violations of human rights such as rape, especially the systematic rape of women,[570] sexual slavery, sexual abuse and forced pregnancy in situations of armed conflict. Noting that violations of this kind require a particularly effective response, it calls for the punishment of perpetrators. The **1995 Beijing Declaration** also made significant contributions to the fight against forced marriage in peace time, by including forced marriage in an expanded concept of trafficking and exploitation. It advocates appropriate measures to be taken by States and other stakeholders to

---

[563] Ibid, para. 28; incidentally only 'systematic rape of women in war situations' was specifically listed as one of the crimes that should be stopped.
[564] Ibid, para. 38.
[565] See p. 102.
[566] For significant feminist scrutiny of the concept of harm, see West, n 302; Joanne Conaghan, 'Law, Harm and Redress: A Feminist Perspective' (2002) 22 Legal Stud 319; Catharine A MacKinnon, *Sexual Harassment: Its First Decade in Court* (na 1993); Adrian Howe, 'The Problem of Privatized Injuries: Feminist Strategies for Litigation' (1990)10 SLPS 119.
[567] (adopted 20 December 1993) A/RES/48/104 (UNGA) (adopted without vote by the UNGA).
[568] Para. 131; See Judith Gardam, 'Women and the Law of Armed Conflict: Why the Silence?' (1997) 16 International and Comparative Law Quarterly 55, 77ff.
[569] **1995 Beijing Declaration**, para. 133.
[570] Ibid, para. 131.

tackle root factors that encourage trafficking in women and girls for forced marriages and other forms of sexual exploitation.[571]

The massive scale of sexual violence perpetrated against women during the war in the former Yugoslavia, also spurred many women's rights activists, feminists' scholars and NGOs to clamour for such atrocities to be recognised as violations of the laws of war.[572] During this period, feminists were more interested in evaluating how human rights norms can be interpreted and applied in favour of women than with criticising international law.[573] According to Edwards, it was a period when the 'women's-rights-are-human-rights' or 'gender mainstreaming' agenda[574] was placed on the front burner of feminists' discourse.[575] The goal of mainstreaming[576] is to achieve gender equality.[577]

Despite these positive developments, feminists highlighted the issue of a lack of enforcement rather than a lack of law[578] in the existing system of international law that does not offer the needed transformative outcomes to women. These claims appear to ignore gaps in the law[579] such as the absence of provisions on violence against women in existing relevant international law treaties. These gaps have been recognized and have necessitated the call by women's rights activists

---

[571] Ibid, para. 130 (b).

[572] See e.g. Theodor Meron, 'War Crimes in Yugoslavia and the Development of International Law.'(1994) 88(1) AJIL 78; M. Cherif Bassiouni, 'The United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)' (1994) 88(4) AJIL 784; Alfred P. Rubin, 'An International Criminal Tribunal for Former Yugoslavia' (1994) 6 Pace Int'l L. Rev. 7.

[573] See Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge UP 2011) 41.

[574] Ibid; the UN's gender mainstreaming policy, a strategy for promoting gender equality, has been adopted globally by many states and international organizations. However, it is pertinent to note that despite wide acceptability of the policy, because the analysis of 'how power operates and how change takes place differs substantially', 'the content and extent of the gender mainstreaming change agenda are severely disputed'; see Tine Davids et. al, 'Feminist Change Revisited: Gender Mainstreaming as Slow Revolution' (2014) 26(3) Journal of International Development 396.

[575] Edwards, n 573, 41, 54.

[576] It is defined 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 perpetrated. The ultimate goal is to achieve gender equality… '*

[577] See UN Economic and Social Council, *Mainstreaming the Gender Perspective into all Policies and Programmes in the United Nations System: Report of the Secretary-General,* (12 June 1997) UN Doc E/1997/66.

[578] See Edwards, n 573, 118, 122.

[579] The proposal for internal structural reforms is similar to that of the structural bias feminists; see Edwards, n 573, 3, 257; J.D. Wilets, 'Conceptualizing Violence: Present and Future Developments in International Law: Panel III: Sex and Sexuality: Violence and Culture in the New International Order: Conceptualizing Private Violence against Sexual Minorities as Gendered Violence: An International and Comparative Perspective' (1997) 50 Alb. L. Rev 989; H. Pearce, 'An Examination of the International Understanding of Rape and the Significance of Labelling it Torture' (2003) 14 lnt'l J. Ref. L. 534.

and human rights advocates for internal structural reforms.[580] One of the reforms proposed is the incorporation of provisions on violence against women in existing relevant international law treaties. Rather than amending the existing international law treaties that recognize sexual violence as a war crime, crime against humanity, torture as well discrimination as a violation of international criminal law, the UN passed several resolutions, to fill the gaps.

I will briefly examine these laws in support of the contention that what matters is the effective enforcement of existing laws and not the enactment of new laws. The problem of enforcement or implementation gaps is responsible for the prevalence of sexual violence and attendant impunity.[581]

3.12.1. Sexual Violence as a War Crime

Rape and other forms of sexual violence against women during armed conflict have been prohibited by international law for over a century.[582] Under international humanitarian law, civilians, prisoners of war, and other non-combatants are protected during international and non-international or internal armed conflicts.[583] Perpetrators can be held accountable for rape and other forms of sexual violence as war crimes, crimes against humanity, and acts of genocide, depending on the context within which the crimes are committed.[584]

The most important conventions that offer some measure of protection to women in war are the four **Geneva Conventions** and their two **Additional Protocols**. These instruments implicitly and explicitly condemn rape as well as other forms of sexual violence as serious violations of humanitarian law in both international and internal conflicts**.** In international armed conflicts, such crimes are regarded as grave breaches of the **Geneva Conventions** and are considered war crimes,

---

[580] Ronagh JA McQuigg, 'Is it Time for a UN Treaty on Violence against Women?' (2018) 22(3) I.J.H.R. 305; Rashida Manjoo and Jackie Jones (eds.) *The Legal Protection of Women from Violence: Normative Gaps in International Law* (Routledge 2018).

[581] See Christine Hughes and Oxfam, Canada, Legislative Wins, Broken Promises Gaps in Implementation of Laws on Violence Against Women and Girls (Oxfam Research Report (2017) 5, for key findings.

[582] Although not of universal application, an example of an 'evolving law prohibiting war-related rape include Italian lawyer Lucas de Penna's advocating in the thirteenth century for the punishment of wartime rape just as severely as rape committed in peacetime, and Hugo Grotius stating in the sixteenth century that sexual violence committed in wartime was a punishable crime.' The first international instrument for the conduct of war addressing sexual violence, is the. Other laws include the **The Brussels International Declaration of 1874 Concerning the Laws and Customs of War**, the **1863 Instructions for the Government of Armies of the United States in the Field** (**1863 Lieber Code),** whose articles 44 and 47 served as the basis for subsequent war codes and lists rape by a belligerent as a war crime punishable by death.

[583] See 1st, 2nd, 3rd, and 4th **Geneva Conventions**; **Protocol Additional to the Geneva Conventions of 12 August 1949**, **and Relating to the Protection of Victims of International Armed Conflicts** (adopted 8 June 1977, entered into force 7 December 1978) 1125 U.N.T.S. 3 [Hereinafter **Additional Protocol I**]; **Additional Protocol II**. Other sources of international humanitarian law are the **1907 Hague Convention** and Regulations, Decisions of International Tribunals and Customary law.

[584] Rape and other forms of sexual violence can be defined as constituent elements of genocide. Genocide is defined under the **1948 Convention on the Prevention and Punishment of the Crime of Genocide** as 'acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group.'

while during internal armed conflicts they are increasingly been recognized as war crimes against civilians.

State parties to non-international armed conflicts, like in Sierra Leone are required to comply with Article 3 common to the **Geneva Conventions** and rules of customary IHL.[585] This article can be regarded as an implicit condemnation of sexual violence, as it prohibits 'outrages upon personal dignity, in particular humiliating and degrading treatment.' Article 4 of **Protocol II**, which governs internal armed conflicts is applicable to the conflict in Sierra Leone. It expressly prohibits 'violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment, such as torture, mutilation or any form of corporal punishment' and 'outrages upon personal dignity, in particular humiliating and degrading treatment, rape and enforced prostitution and any form of indecent assault' as well as 'slavery and the slave trade in all their forms.'[586]

Furthermore, article 27 on the treatment of protected persons states that 'women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.'[587] Article 147 provides that 'torture or inhuman treatment' and 'wilfully causing great suffering or serious injury to body or health' are grave breaches of the conventions.[588] The ICRC, for example, regards rape and other forms of sexual violence as grave breaches, with even a single act of sexual violence constituting a war crime.[589]

From the foregoing, the treatment of the Bush wives was in violations of Article 3 common to the **Geneva Conventions**, article 4 of **Protocol II**, art. 27 (2) of the **Fourth Geneva Convention**, article 76 of **Protocol I**. Acts of sexual violence committed against civilians, including the Bush wives in Sierra Leone can therefore be classified and prosecuted as war crimes.

3.12.2. Sexual Violence as a Crime against Humanity

Adjudicated as a crime against humanity, forced marriage unlike war crimes, may be committed in peace time as well as during conflicts, as part of a widespread attack against the civilian population.[590] While several crimes against humanity has been defined, prohibited and incorporated into a number of international

[585] The Fourth **Geneva Convention** provides a basis for defining the protections provided under Common Article 3.
[586] **Additional Protocol II**, art. 4 (2) (a), (e), and (f). Sierra Leone acceded to **Additional Protocol II** on 21 October 1986, with effect from 20 September 1989.
[587] Fourth **Geneva Convention**, art. 27 (2); **Additional Protocol I**, art. 76 extends this protection of protected persons to all women.
[588] Ibid, 4th **Geneva Convention**, art. 147.
[589] Quoted in Theodor Meron, 'Rape as a Crime Under International Humanitarian Law' (1993) 87 AJIL 424, 426 (as cited in the ICRC, Aide Mémoire 3 December 1992).
[590] See p. 119.

treaties and statutes of international criminal tribunals,[591] the definition of forced marriage has been the subject of scholarly debate.[592] The statutes of both the **International Criminal Tribunal for the former Yugoslavia** and the **International Criminal Tribunal for Rwanda**, for example, explicitly mention rape, when committed as part of a widespread attack against the civilian population, as a crime against humanity.[593] The **ICTR Statute** also listed rape, enforced prostitution, and any form of indecent assault as war crimes.[594]

While both tribunals have advanced international criminal jurisprudence by setting precedents in the prosecution of conflict-related sexual violence, they omitted forced marriage.[595] They have both ruled on the definitions and elements of many gender-related crimes.[596] Similarly, the **ICC Statute** also explicitly enumerates acts of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as acts that can be crimes against humanity.[597] This is a major progress regarding the possibility for prosecuting a wide range of sexual and gender-based offenses. Despite these progressive developments in the late 1990s, the drafting process for the **ICC Statute** became controversial in relation to issues of sexual violence and gender sensitivity.[598]

This resulted in a group of women's rights activists and organizations forming the Women's Caucus for Gender Justice in the International Criminal Court that lobbied for the inclusion of a gender perspective in the Statute.[599] The Women's

---

[591] Including the **Rome Statute**.

[592] See p. 123ff.

[593] Art. 5, **Statute of the International Criminal Tribunal for the former Yugoslavia** (adopted 25 May 1993) Res. 808/1993, 827/1993 (amended by Res. 1166/1998, 1329/2000, 114/2002) (UNSC). [Hereinafter **ICTY Statute**]; art. 3, **Statute of the International Criminal Tribunal for Rwanda** (adopted 8 November 1994) Res 955 (1994) (UNSC), (Last amended by Res 1717 (2006) [Hereinafter **ICTR Statute**]; forced marriage, although prevalent during the Rwandan conflict was not listed in the ICTR statute.

[594] Art. 4; For an overview, see Kelly D. Askin, 'Prosecuting Wartime Rape and Other Gender-Related Crimes Under International Law: Extraordinary Advances, Enduring Obstacles' (2003) 21 Berkeley J. Int'l L. 288, 317-346

[595] See *Akayesu's case*, n 384; *Prosecutor* v *Tadic* (Judgment) IT-94-1 (11 November 1999) (ICTY); *Prosecutor* v *Delalic et al*. (Judgment) IT-96-21-A (16 November 1998) (ICTY); *Prosecutor* v *Furundžija*, n 416; *Prosecutor v Blaskic* (Judgment) IT-95-14, (3 March 2000) (ICTY); *Prosecutor* v *Kvocka et al.* (Judgment) IT-98-30-T (2 November 2001) (ICTY); *Prosecutor* v *Kunarac et. al* (Foca case) (Judgment, Appeals Chamber) IT-96-23 and IT-96-23/1 (12 June 2002) (ICTY).

[596] Ibid.

[597] **Rome Statute**, article 7 (1) (g) defines crimes against humanity as 'any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.'

[598] T Altunjan, 'The International Criminal Court and Sexual Violence: Between Aspirations and Reality' (2021) 22 (5) German Law Journal 878, 880.

[599] See Barbara Bedont and Katherine Hall-Martinez, 'Ending Impunity for Gender Crimes Under the International Criminal Court' (1999) 6 Brown J. World Aff. 65, 66-67; Valerie Oosterveld, 'The Making of a Gender-Sensitive International Criminal Court' (1999) 1 Int'l L. F. Du Droit Int'l 38, 38-39; William Pace and Jennifer Schense, 'The Coalition of the International Criminal Court at the Preparatory Commission' in Roy S.

Caucus was successful in recommending an expansion of the list of sexual and gender-based crimes.[600] More importantly, it also successfully stopped sexual crimes being attached to 'outrages upon personal dignity', thus abandoning the patriarchal notion that sexual crimes violate the victim's 'honor'.[601]

3.12.3. Sexual Violence as Torture[602]

International human rights instruments always provide protection for women and girls, including during armed conflict. These include protection from rape and sexual assault as forms of torture and other prohibited ill-treatment, slavery, forced prostitution, and discrimination based on sex. The obligation to respect international human rights standards has been extended beyond states to include armed opposition groups, particularly those controlling territories.[603] This topic has been extensively discussed in chapter 3.

3.12.4. Sexual Violence as Discrimination: a Violation of International Human Rights Law

Sexual violence is generally recognized as a violation of women's rights to be free from discrimination based on sex as provided for under the **ICCPR**.[604] Under Article 1 of **CEDAW**,[605] the definition of discrimination is considered to include 'gender-based violence precisely because gender-based violence has the effect or purpose of impairing or nullifying the enjoyment by women of human rights' on a basis of equality with men.[606] A wide range of obligations enumerated by the **CEDAW** Committee for states related to ending sexual violence, include ensuring appropriate treatment for victims in the justice system, counselling, support services, medical treatment, and psychological assistance.[607] A 1993 UN General Assembly resolution provides that prohibiting gender discrimination includes eliminating gender-based violence, and that states 'should pursue by all appropriate means and without delay a

---

Lee ed., *The International Criminal Court, vol. 2: Elements of Crimes and Rules of Procedure and Evidence* (CUP 2000) 705, 719.

[600] Women's Caucus for Gender Justice, *Recommendations and Commentary for December 1997 PrepCom on the Establishment of an International Criminal Court (*UN 1997) 31.

[601] See Bedont and Hall-Martinez, n 599, 73.

[602] See pp. 81-83 for details.

[603] Nigel S. Rodley, 'Can Armed Opposition Groups Violate Human Rights?' in P. Mahoney and K. Mahoney (eds.) *Human Rights in the 21st Century: A Global Challenge* (Martinus Nijhoff 1993) 297, 313-314; Katharine Fortin, The Accountability of Armed Groups under Human Rights Law (Oxford UP 2017) 166.

[604] See **ICCPR**, arts. 2 (1) and 26.

[605] **CEDAW** art. 1; Sierra Leone has also adopted **the Declaration on the Elimination of Violence against Women**.

[606] Anne Tierney Goldstein and Margaret A. Schuler, *Gender Violence: The Hidden War Crime* (Women, Law & Development International 1998) 37.

[607] UN Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 19: Violence against women, 1992, para. 24, <https://www.refworld.org/legal/resolution/cedaw/1992/en/96542> accessed 27 March 2023.

policy of eliminating violence against women.'[608] The **Child Rights Convention** also provides for freedom from discrimination on the basis of gender in its article 2.

At the regional level, the **African Charter**, guarantees the '…elimination of every discrimination against women…and protection of the rights of the woman and the child.'[609] as well as the right to integrity of one's person, and the right to be free of '…[a]ll forms of exploitation and degradation…particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment.'[610]

3.13. UN Security Council Resolutions

In 2000, the UN Security Council passed the **UN Security Council Resolution 1325** on 'Women, Peace and Security, Children and Armed Conflict, and Protection of Civilians in Armed Conflict.'[611] The resolution affirms the need to protect women and girls during and after cessation of armed conflicts. The Security Council has since the Sierra Leonean war ended in January 2002 passed ten other resolutions on the same subject. The resolutions recognize the detrimental impact of sexual violence in conflict on communities, and how this crime undermines efforts being made to achieve peace and security and rebuild societies on the cessation of conflicts.

These resolutions represent how the international community views and deals with conflict-related sexual violence. No longer seen as an inevitable by-product of war, sexual violence is now recognized as a crime that is preventable and punishable under International Human Rights Law and International Criminal Law. Though non-binding, these instruments specifically provide for the recognition of harms women suffer in terms of peace processes and transitional justice mechanisms. While UN resolutions **1325(2000)**,[612] **1889(2009)**,[613] **2122(2013)**,[614] **2242(2015)**[615] and **2493(2019)**[616] deal with women's active and effective participation in peace making and peacebuilding, resolutions

[608] **Declaration on the Elimination of Violence against Women**, n 567, art. 4
[609] **African Charter**, art. 3.
[610] Ibid, arts. 4 and 5.
[611] **UNSC Res. 1325(2000)** (31 October 2000)
[612] Ibid.
[613] **UNSC Res. 1889(2009)** (5 October 2009)
[614] **UNSC Res. 2122(2013)** (18 October 2013)
[615] **UNSC Res. 2242(2015)** (13 October 2015)
[616] **UNSC Res. 2493(2019)** (29 October 2019)

1820(2008),[617] **1888(2009)**,[618] **1960(2010)**,[619] **2106(2013)**[620] and **2467(2019)**[621] deal with the prevention and response to conflict-related sexual violence.

The **UNSC Res 1325 (2000)**, for example, calls

> *...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.*[622]

Less than a decade after the adoption of the **UNSC Res 1325 (2000)**, the issue of conflict-related sexual violence as a threat to international peace and security was recognized in the groundbreaking resolution **UNSC Res 1820 (2008)**. Its paragraph 5 provides for the use of targeted sanctions against the perpetrators of conflict-related sexual violence, which was further amplified and renewed in **UNSC resolutions 1888 (2009), 1960 (2010), 2106 (2013)** and **2242 (2015)**. Unfortunately, enforcement of sanctions against parties to armed conflicts, who commit sexual violence against women and girls, has been difficult to implement in practice.[623] Despite the threat of sanctions, there are regular reports of significant sexual violence against women and girls in the Democratic Republic of Congo,[624] Somalia,[625] Nigeria[626] as well as in other conflict zones.

Despite these laws, the global prevalence of sexual violence both in conflict and non-conflict situations remains disturbingly high, suggesting that the problem may not be solved by enacting more laws. A multi-country research report examined the problem of 'implementation gaps' regarding government failures to fulfill binding legislative obligations to address and prevent violence against women and girls.[627] It showed how implementation of violence against women and girls (VAWG) laws can be improved.

These challenges are not different from those that have long been identified as areas of concern in Sierra Leone by UN treaty bodies and other stakeholders. They include the failure of persons responsible for implementing such laws to effectively follow the appropriate processes and procedures. For example, how

---

[617] **UNSC Res. 1820(2008)** (19 June 2008)
[618] **UNSC Res. 1888(2009)** (30 September 2009)
[619] **UNSC Res. 1960(2010)** (16 December 2010)
[620] **UNSC Res. 2106(2013)** (24 June 2013)
[621] **UNSC Res. 2467(2019)** (23 April 2019)
[622] **UNSC Res. 1325**, para. 10.
[623] As provided for in **UNSC Res. 1820 (2000)**, para. 5.
[624] See UNSC, Conflict-Related Sexual Violence: Report of the Secretary-General (30 March 2021) UN Doc S/2021/312.
[625] Ibid.
[626] Ibid.
[627] Hughes and Oxfam, n 581, 1.

‘women’s reports of violence are handled, the measures of protection that women should be afforded to prevent further harm, and the enforcement of court orders’ are some of the shortfalls. They also found that significant deficits exist in VAWG infrastructure and services, including shelters, counselling, and legal aid services for victims of violence, as well as lack of proper detention facilities for perpetrators. The treatment of women who have experienced violence as they try to access justice and support services, is also a challenge as they are often re-victimized, blamed, not believed, or dissuaded from pressing charges.

The research identified fourteen factors that were responsible for implementation gaps in the seven countries[628] studied. Five of the most cited factors are: insufficient financial resources for the implementation of legislation; international funding that usually becomes unsustainable; absence of requisite information, awareness, and skills for implementation of laws; lack of knowledge of the laws; ‘insufficient coordination and cooperation among key stakeholders, such as law enforcement and service providers; and the implementing actors’ personal attitudes and social norms that condone VAWG and gender inequality.[629]

The research concluded that there was a link between the sociocultural and the political. Finally, political will - ‘the state’s demonstrated prioritization of VAWG as a central concern - is sorely lacking, as reflected in corruption, poor accountability compliance, and lack of budgetary allocations.’ These factors are prevalent in Sierra Leone and serve to prevent the Bush wives from enjoying their fundamental rights. This shows that lack of respect for women’s human rights in rural Sierra Leone, which is key to the harms women experienced before, during and after the war, is not unique but an almost universal phenomenon.

The success stories on the implementation of VAWG legislation in the Dominican Republic and Burkina Faso show that political will, supported by international funding was key to the fulfilment and enjoyment of women’s rights. The Dominican Republic, supported by a well-organized feminist movement, established the institutional infrastructure and the training necessary for women to access services and justice. While in Burkina Faso penal laws were enacted alongside strategies aimed at lowering the social acceptance of FGM/C.

3.14. Conclusion

Applying the literature on women’s human rights, I attempted to prove that both international and domestic regulatory frameworks contributed to and did not ameliorate the harm(s) the Bush wives suffer post conflict. Based on the Hague

[628] Namely Benin, Bolivia, Burkina Faso, Dominican Republic, India, Malawi, and Nicaragua.
[629] Hughes and Oxfam, n 581, 2.

Principles on Sexual Violence, I argued that both the UN and the government of Sierra Leone failed to fulfil their legislative obligations to address and prevent violence against women and girls.

The government of Sierra Leone failed to protect the Bush wives from sexual violence, to hold perpetrators of sexual violence to account under national law or refer the matter to a competent court; did not effectively guarantee remedies and assistance to survivors; and by the adoption of the Amnesty Act fostered or allowed impunity for the perpetrators of sexual violence. Moreover, by failing to amend section 27(4) of the **Constitution**, discriminatory laws, and practices, *inter alia*, perpetrators of forced marriage escaped justice by marrying their victims.

I analysed the shortfalls between Sierra Leone's obligations or commitments as provided for in both international and domestic laws, and the realities for the Bush wives, demonstrated by their inability to access services and justice. Despite Sierra Leone's efforts to fulfil its international obligations to promote and protect women's human rights, by *inter alia*, the enactment of gender sensitive laws, justice is still elusive for the survivors of sexual violence. The laws passed after the war offered little protection to the Bush wives who were forced to return to their ex-abductor husbands. For example, the government, by the criminalization of marital rape, does not foster or allow impunity for the perpetrator, but the grip customary norms have on women makes implementation of sections 1 and 2(2)(a) of the **2007 Domestic Violence Act** an impossibility. This is an example of a law that conflicts with the culture of the people it intends to protect.

Enactment of laws without effective enforcement and implementation strategies amount to denial of justice. Failure to hold perpetrators to account prevents the laws from having a greater impact on ending violence against women and girls. The inability or unwillingness of the state to prosecute the perpetrators of forced marriage law or refer such matters to a competent court promotes a culture of impunity, beneficial to the ex-abductor husbands and makes justice elusive for the female partners of continuing forced marriages.

Although, the adoption of the resolutions shows the UN's deep concern about sexual violence against women and children, and the strong commitment to end 'the most pervasive yet least recognised human rights abuse in the world',[630] the

[630] Thoraya Ahmed Obaid, 'United Nations Agencies - Forward Together in the Response to Violence against Women' (2010) 47(1) U.N. Chron. 9. Another important contribution to the resolution on children and armed conflict the **UNSC Res. 1882 (2009)** (4 August 2009) *inter alia*, expanded the monitoring and reporting mechanisms of **UNSC Res 1612 (2005)** (26 July 2005) to include sexual violence committed against children, independent of the question of whether child soldiers are present. This is significant because of the large number of female children subjected to sexual violence in conflict areas. It is estimated that nearly half of the women raped in the Democratic Republic of the Congo are minors, Brett D. Nelson *et al.*, 'Impact of Sexual Violence

impact was a far cry from what was intended. Given that many of the Bush wives were minors when they were abducted, it is imperative that justice be done. This view is supported by Jim Kallstrom's[631] statement that: *'All victims deserve justice; all criminals must be punished. But when a crime involves a child, the stakes become so much greater.'* With so many children abducted and made wives during the war, the 'cry' for justice is loud and should not be ignored.

The recent criminalization of marital rape and domestic violence are welcome developments, but change has been slow as enforcement of these laws is fraught with difficulties.[632] Although, it may take many years to translate the letter of the law into justice the existence of the new laws confirms that Sierra Leonean legislators view certain customary arrangements as a barrier to the realization of women's rights.

There are differences in how women experience harm, and how the law recognizes the experience and the remedy offered in response. This fact is true of the Sierra Leone legal system which neither recognizes nor responds adequately to the harms a bush wife faces post-conflict. This omission in the legal system ended up exacerbating existing injustices, such as rape and domestic violence (entrenched patriarchal power structures). The new injustices created harms that affect not only the Bush wives, but their families as well as communities. One of the factors that influenced the Bush wives' return to their ex-abductor husbands after the war was the stigma, isolation and ostracization they were subjected to when they returned home.[633] The group nature of the harms of a continuing forced marriage was not adequately captured by law and legal mechanisms.

on Children in the Eastern Democratic Republic of Congo' (2011) 27(4) Medicine, Conflict and Survival 211, 212.

[631] Interview with James Kallstrom (Former director, FBI New York office), CBS Program '60 Minutes' (21 February 1999).

[632] See pp. 61-63; paras. 3.10.2 & 3.12.4.

[633] See chapter 6 for the victim's stories.

4. Chapter Four: Transitional Justice - The Case Law

4.1. Introduction

A brief overview of the Sierra Leonean conflict in chapter two shows how the atrocities committed were the most inhuman perpetrated against a civilian population in the history of contemporary conflicts.[634] However, the global community failed to act promptly and to demonstrate its commitment to accountability for the heinous crimes committed during the war. The need to advance justice to the victims and to bring to justice those responsible for committing these crimes and who continued to commit such crimes, while the conflict lasted became evident.

An international criminal tribunal, the SCSL was eventually established after a request was made by the President of Sierra Leone to the UN in 2000 for 'a special court' to address serious crimes against civilians and UN peacekeepers committed during the country's decade-long (1991-2002) civil war.[635] The SCSL made historic contributions to international criminal justice by being the first in history to adjudicate on crimes relating to forced marriage.[636]

In this chapter, I will examine how relevant the SCSL's AFRC Appeal Judgment (and the subsequent RUF Trial Judgment)[637] on forced marriage was to the post-conflict experiences of the Bush wives. I will argue that the landmark judgments did little to advance justice for the Bush wives, because the prosecution of the perpetrators of forced marriage was limited to very few persons. Its impact on the domestic legal scene was limited since the judgement did not significantly ameliorate the conflict harms suffered by these women. The judgments did little or nothing to reduce the lack of respect for women's human rights in rural Sierra Leone, which is key to the harms women experienced before, during and after the war.

Given the little impact, the case law on forced marriage had on the domestic legal scene, applying the literature on women's rights, I will analyse the options available to the Bush wives. These judicial options will address how the serious

[634] UNSC Report 915, n 148, para. 7; see AFRC Trial Chamber Sentencing Judgment, n 148.
[635] UNSC, 'Letter dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council' (10 August 2000) UN Doc S/2000/786.
[636] It was also the first in history to adjudicate on crimes relating to enlistment, recruitment, conscription or use of child soldiers; attacks on peacekeepers; sovereign immunity; effect of national amnesties on the jurisdiction of an international court and procedural relationships with a Truth and Reconciliation Commission, see 'The Residual Special Court for Sierra Leone' < https://rscsl.org/ > accessed 12 September 2023.
[637] The RUF Trial Judgment, n 158, paras. 1461, 1465-1473, followed the precedent on forced marriage laid down by the AFRC Appeal Chamber Judgment.

crimes against civilians, particularly the Bush wives, committed during and after the country's war may be prosecuted.

4.2. Establishment of the Special Court for Sierra Leone

The Special Court for Sierra was an initiative of the government of Sierra Leone to address the individual responsibility of those who had committed crimes against Sierra Leonean and international law. The purpose was to ensure that victims obtain justice and to help bring about lasting peace to the country and the West African sub region.[638] The then impoverished country sought UN assistance, arguing that the crimes committed '…should be of concern to all persons in the world, as they greatly diminish respect for international law and for the most basic human rights.'[639] An outstanding feature of the SCSL that distinguishes it from previous international criminal tribunals is the involvement of the President of Sierra Leone in its establishment.[640] This may suggest the lack of recognition of the seriousness of the situation in Sierra Leone and, or apathy to yet another war in Africa.

The SCSL is an international criminal tribunal by virtue of a bilateral treaty between the UN and the government of Sierra Leone, on 16 January 2002,[641] the month that the country's civil war officially ended. With an initial budget of $75 million, the court was meant to last for only three years, but it formally closed in December 2013 after spending about $300 million.[642] For victims such as the Bush wives, the huge amount of money expended on the court was not commensurate to the results obtained in terms of accountability for the crimes committed.

4.2.1. Competence of the Special Court

The Special Court has the powers: 'to prosecute those 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…'[643] The crimes include: crimes against humanity, violations of article 3

---

[638] Annex to Letter dated 9 August 2000, n 635.
[639] Ibid; the SCSL differs in this respect from the two International Criminal Tribunals set up by the United Nations Security Council following the 'massive' violations of international humanitarian law (and human rights) in former Yugoslavia and Rwanda, in May 1993 and November 1994 respectively.
[640] The **ICTY** and the **ICTR** for example, were established without input from the leaders of their countries.
[641] **Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone**. [Hereinafter the UN-Sierra Leone Agreement'] < https://rscsl.org/> accessed 28 January 2013; The statute of the court which was annexed to the agreement forms an integral part of the Agreement.
[642] See < https://rscsl.org/> n 636.
[643] **2002 Statute of the Special Court for Sierra Leone**, art. 1 (1) [Hereinafter **SCSL Statute**] < http://www.sc-sl.org/ > accessed 28 January 2013. Peacekeepers and related personnel were excluded from prosecution by the Court by virtue of the **SCSL Statute**, arts. 1 (2) & (3). This is despite the grave allegations levied against some of them, see Valerie Oosterveld, 'International Criminal Justice, Politics and the Special Court for Sierra Leone' (2008) 102 Proceedings of ASIL Annual Meeting 19-20.

common to the Geneva Conventions and of Additional Protocol II, and other serious violations of international humanitarian law as well as crimes under Sierra Leonean law.[644] The enumerated crimes cover:

> *...the most egregious practices of mass killing, extrajudicial executions, widespread mutilation, in particular amputation of hands, arms, legs, lips and other parts of the body, sexual violence against girls and women, and sexual slavery, abduction of thousands of children and adults, hard labour and forced recruitment into armed groups, looting and setting fire to large urban dwellings and villages.*[645]

4.3. Forced Marriage at the Special Court for Sierra Leone

The cases involving sexual violence and forced marriage that the SCSL tried include *Prosecutor* v *Brima & Ors*,[646] *Prosecutor* v *Sesay & Ors*[647] *Prosecutor* v *Fofana & Anor,*[648] and *Prosecutor* v *Taylor*[649]. The focus of this chapter will be the Brima and Sesay cases as they are the foremost SCSL cases on forced marriage. The creation of the SCSL turned out to be a 'blessing' for women because in the case of *Prosecutor* v *Brima & Ors*, the Court's Appeal Chamber recognized, for the first time in history, forced marriage as a crime against humanity. Unfortunately, the recognition of forced marriage as an international crime has not yet contributed to ending the practice in conflict and post-conflict zones, nor has it received the kind of prominence accorded to other international crimes of its kind.[650] So, today societal negative reactions to victims of sexual violence and the Bush wives persist in Sierra Leone and other countries.

4.3.1. *Prosecutor* v *Brima & Ors*

History was made on 22 February 2008, when the Appeals Chamber of the Special Court for Sierra Leone recognized the practice of forced conjugal unions

---

[644] **SCSL Statute**, art. 2-5; Inclusion of crimes committed under relevant Sierra Leonean law as a subject-matter jurisdiction of the court, was to make up for gaps in international humanitarian law. The relevant Sierra Leonean laws include the **1926 Prevention of Cruelty to Children Act**, which provides for offences relating to the abuse of girls and the **1861 Malicious Damage Act**, which relates to the crime of arson.

[644] UNSC Report 915, n 148, para. 12.

[645] Ibid.

[646] AFRC Trial Chamber Judgment, n 154, and AFRC Appeal Chamber Judgment, n 176.

[647] RUF Trial Judgment, n 158 and the RUF Appeal Judgment, SCSL-04-15-A (26 October 2009)

[648] SCSL-04-14-T (9 October 2007) and the Appeal Judgment, SCSL-04-14-A (28 May 2008) [Hereinafter the CDF Trial Judgment and the CDF Appeal Judgment].

[649] (Judgment) SCSL-03-1-T, (18 May 2012) [Hereinafter the Charles Taylor's judgment/case]; Charles Taylor was the head of the National Patriotic Front in Liberia (NPFL) and President of Liberia during the Sierra Leone Civil War. He is alleged to have directed the campaign of terror and various criminal acts committed by the NPFL. He also encouraged similar acts committed by the AFRC and RUF against the population of Sierra Leone, see *Prosecutor* v *Taylor* (Indictment) SCSL-03-01-PT (29 May 2007) para. 5; see also Stephen J. Rapp, 'The Compact Model in International Criminal Justice: the Special Court for Sierra Leone' (2008) 57 Drake L. Rev 11, 13-17, 19.

[650] For instance, even after 2008, the UN Security Council refers to 'rape and other forms of sexual violence' in situations of armed conflicts, without specifying forced marriage; see Preambles of **UNSC Res. 1960 (2010)** and **UNSC Res. 2122 (2013)**, and **UNSC Res. 1280 (2008),** para. 4.

which occurred during the Sierra Leone armed conflict, as a crime against humanity of other inhumane acts.'[651] The AFRC Appeal court in *Prosecutor* v *Brima et. al,*[652] upheld the Prosecution's submission that forced marriage amounts to 'other inhumane acts', pursuant to Article 2(i) of the **Statute of the Special Court.**[653] This decision overruled the 20 June 2007 judgment of the Trial Chamber II of the SCSL.[654] The AFRC Trial Chamber had held that the crime of 'forced marriage' is completely subsumed in the crime against humanity of Sexual Slavery, and that there is no lacuna in the law which would necessitate a separate crime of 'forced marriage' as an 'other inhumane act'.[655] In this landmark ruling, the AFRC Appeal Chamber affirmed that although forced marriage resembles situations of both arranged marriages and sexual slavery, it can be distinguished from them, and that this justifies its prosecution as an 'other inhumane act' under crimes against humanity.

The appellants in this case, Alex Tamba Brima , Brima Bazzy Kamara and Santigie Borbor Kanu had been indicted for crimes against humanity, violations of Article 3 Common to the **Geneva Conventions** and of **Additional Protocol II** and other serious violations of international humanitarian law. The crimes were allegedly committed during the eight-year long armed conflict in Sierra Leone, when the accused persons were the three most senior commanders of the AFRC. The Prosecution alleged that the accused persons committed the crimes 'as part of a campaign to terrorise the civilian population of the Republic of Sierra Leone, and [which] did terrorise that population.'[656]

4.3.1.1. Facts of the Case

The RUF was formed in the late 1980s by Foday Saybana Sankoh, in a second attempt to overthrow the government of Sierra Leone. Sankoh was a former colonel, who had earlier been discharged with dishonour from the Sierra Leonean Army, after his involvement in a failed coup d'état, in 1971.[657] The armed conflict started in Kailahun District in March 1991, escalated, and spread to other districts controlled by the RUF in the following years.

---

[651] AFRC Appeal Chamber Judgment, n 176.
[652] Despite the relative success of the court, in comparison with other international tribunals, it was admitted that more could have been done on SGBV outreach. For example, more confidence-building could have been done with the Bush wives, 'who were worried that they would be prosecuted by the SCSL because of their simultaneous victim-perpetrator status (as many of them were also forced to support or fight with the rebels)', see Valerie Oosterveld, 'Prosecuting Sexual Violence at the Special Court for Sierra Leone' (*IntLawGrrls,* 18 December 2017) < https://ilg2.org/2017/12/18/prosecuting-sexual-violence-at-the-special-court-for-sierra-leone/ > accessed 29 September 2023.
[653] See AFRC Appeal Chamber Judgment, n 176, para. 203.
[654] AFRC Trial Chamber Judgment, n 154.
[655] Ibid, para. 713.
[656] Ibid, para. 660.
[657] Ibid., para. 156.

The Sierra Leone Army took over most of the positions held by the RUF, in March 1995. This made it possible for elections to be held in the country a year later. Ahmed Tejan Kabbah, the head of the Sierra Leone People's Party emerged as the winner of the presidential elections. Kabbah's rule was short lived, as on 25 May 1997, a coup d'état was organized by 12 junior rank officers of the Sierra Leone Army. The successful coup plotters ousted the elected government and formed a new government called the Armed Forces Revolutionary Council or AFRC. The AFRC, headed by Johnny Paul Koroma, also suspended the 1991 Constitution of Sierra Leone, and banned political parties. Johnny Paul Koroma then invited the RUF to join the new government.

Thereafter, the new government sent out armed forces to gain control over the whole country. The ensuing military operations were targeted mainly at supporters of Kabbah's government, who were perceived as enemies of the new government. This led to the widespread commission of atrocious, brutal and heinous crimes against the people of Sierra Leone. Efforts were made by international and regional bodies to bring the conflict to an end and to restore constitutional governance to Sierra Leone.[658] In March 1998, with the help of ECOMOG, the AFRC forces who were then occupying Freetown, the capital city, were driven out and the overthrown civilian government of President Kabbah was reinstated.

Up until January 2002 when the conflict ended, the AFRC forces kept on fighting and committing widespread atrocities in Sierra Leone. One of the crimes allegedly committed by the accused persons was that of forced marriage. Remarkably, although, there was widespread evidence of the practice of forced marriage during the conflict, the crime was not included in the text of the Statute of the SCSL; neither was contained in the original indictment.[659] Thus, the charges were restricted to those listed in the SCSL Statute.[660] This omission, I

[658] Such attempts included the **Abuja Ceasefire Agreement between the Government of Sierra Leone and the RUF** ('Abuja Ceasefire Agreement') 10 November 2000; the **Peace Agreement between the Government of Sierra Leone and the RUF** (Lomé Peace Agreement]) 7 July 1999; the **Agreement on Ceasefire in Sierra Leone** ('Ceasefire Agreement'), signed in Lomé (Togo), 18 May 1999; **ECOWAS Six-Month Peace Plan for Sierra Leone** ('Conakry Accord'), 23 October 1997; and the **Peace Agreement between the Government of the Republic of Sierra Leone and the RUF** ('Abidjan Accord'), 30 November 1996; see Richard Iron, 'Ending The Sierra Leone War.' in Damien Kingsbury & Richard Iron (eds.), *How Wars End: Theory and Practice* (Routledge 2023) 89, 92.

[659] The indictments contained 17 counts of crimes against humanity, violations of Article 3 Common to the **Geneva Conventions** and of **Additional Protocol II** and other serious violations of international humanitarian law: *Prosecutor* v *Brima* (Indictment Annexes: Prosecutor's Memo to Accompany Indictment, Investigator's Statement, Draft Order Confirming Indictment) SCSL-03-06-I (7 March 2003); *Prosecutor* v *Kamara* (Prosecutor's Memorandum to Accompany the Indictment) SCSL-03-10-PT (26 May 2003); *Prosecutor* v *Kanu* (Indictment) SCSL-03-13-PT (15 September 2003).

[660] Separate indictments were initially issued by the Prosecution against Alex Tamba Brima (First Accused), Brima Bazzy Kamara (Second Accused) and Santigie Borbor Kanu (Third Accused), in March and September

argue, indicates the lack of seriousness accorded sexual crimes against females by the international criminal law regime. To make up for this omission, the Prosecution applied for leave to amend the Consolidated Indictment and to include the count of 'other inhumane acts' pursuant to Article 2(i) of the Statute for acts of 'forced marriage.' The need to end the impunity of perpetrators of sexual violence was central to the inclusion of the 'consciously feminist'[661] charges as stated by David Crane, the previous Chief Prosecutor of the SCSL in a press statement:

> *The Office of the Prosecutor is committed to telling the world what happened in Sierra Leone during the war, and gender crimes have been at the core of our cases from the beginning. These new charges recognise another way that women and girls suffered during the conflict*[662].

The new charge of forced marriage was rightly regarded as a welcome development by most feminist and other scholars.[663] This is because although forced marriage is a common feature of armed conflicts in countries,[664] it had never prior to the SCSL's judgement been tried as an offence by any other international tribunal.[665] Following the precedent laid down in *Prosecutor* v *Brima & Ors'* ruling that 'forced marriage' is a distinct crime against humanity, the RUF Trial Chamber issued the first-ever convictions for forced marriage as a crime against humanity.[666]

2003. On 28 February 2004, the AFRC Trial Chamber ordered a joint trial of the three accused persons. The Prosecutor then consolidated the indictments.

[661] Toy-Cronin, n 529, 539, 563.

[662] Special Court for Sierra Leone, 'Prosecutor Welcomes Arraignment of RUF and AFRC Indictees on Charges Related to Forced Marriage' (2004) <http://www.rscsl.org/Documents/Press/OTP/prosecutor-051704.pdf> accessed 15 September 2015; see also James M. Clark, 'Forced Marriage: The Evolution of a New International Criminal Norm' (2012) 3 ASLR 4, 5

[663] For an analysis of the AFRC judgments, see Toy-Cronin, n 529, 539, 562-571; Valerie Oosterveld and Andrea Marlowe, 'Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara & Santigie Borbor Kanu; Prosecutor v Moinina Fofana & Allieu Kondewa' (2007) 101 Am. J. Int'l L. 848; Valerie Oosterveld, The Special Court for Sierra Leone's Consideration of Gender-based Violence: Contributing to Transitional Justice? (2009) 10 Hum. Rts. Rev 73; Valerie Oosterveld, 'The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments' (2011) 44 Cornell Int'l L. J. 50; Jain, n 544, 1013; Micaela Frulli, 'Advancing International Criminal Law: The Special Court for Sierra Leone Recognizes Forced Marriage as a 'New' Crime Against Humanity' (2008) 6 (5) JICJ 1033; Charles Jalloh, 'Forced Marriage as a Crime Against Humanity' in *The Legal Legacy of the Special Court for Sierra Leone* (Cambridge UP 2020)150.

[664] Including Cambodia, Rwanda, Nigeria, and Uganda.

[665] Although the issue of forced marriage was mentioned it was never charged by the ICTR, see e.g, *Prosecutor* v *Muhimana* (Judgment and Sentence) ICTR-95-1B -T (28 April 2005) (Trial Chamber III) paras. 307-323 (ICTR). Although characterized as sexual enslavement, Sebutinde J. referred to the ICTY's case of *Prosecutor* v *Kunarac*, n 595, as an example of a forced marriage case; see AFRC Trial Chamber Judgment, n 154, Separate Concurring Opinion of the Hon. Justice Julia Sebutinde, appended to Judgment Pursuant to Rule 88(C) 573.

[666] Unfortunately, a similar opportunity to further address this crime was wasted by the CDF Trial Chamber in *Prosecutor* v *Fofana & Anor*, n 648.

4.3.2. The Revolutionary United Front (RUF) Trial Judgment[667]

The three accused persons, Issa Hassan Sesay, Morris Kallon and Augustine Gbao were members of the RUF, a rebel group that was actively involved in the Sierra Leonean war.[668] They were each charged with eight counts of crimes against humanity, eight counts of war crimes (violations of Article 3 common to the **Geneva Conventions** and **Additional Protocol II**) and two counts of other serious violations of international humanitarian law. The charges relate to violations against civilians and civilian property, including rape (Count 6), sexual slavery and other sexual violence (Count 7).[669] Like the *Brima's* case, the Prosecution sought and succeeded in amending the Indictment, to add a new charge of 'forced marriage' as an 'other inhumane act.'[670]

The RUF Trial Chamber found that forced marriage was a strategic plan of the rebels to subjugate and terrorize the civilian population, resulting in the isolation and debasement of individuals and the destruction of the family and community.[671] Notably, the RUF trial did little to improve on the definition of forced marriage despite the challenges associated with the definition of forced marriage by the AFRC Appeals Chamber. The Trial chamber did not explicitly define forced marriage, but instead set out a wide variety of evidence that it considered demonstrative of forced marriage.[672] The court, for example found the *actus reus* of 'forced marriage,' to be the imposition of a forced conjugal association.[673]

The pattern of conduct of forced marriage noted by the RUF Trial Chamber was similar to what the victims of forced marriage experienced under the AFRC regime: abduction of women and girls and distribution to rebels for exclusive sexual and domestic purposes.[674] The duties were also undertaken in coercive situations of 'threats intimidation, manipulation and other forms of duress […] predicated on the victim's fear and their desperate situation.'[675] Similarly, refusal to perform domestic and sexual duties and disloyalty to the so-called husband

---

[667] RUF Trial Judgment, n 158; the Trial Chamber observed that the Indictments against two other more senior members of the RUF - Foday Saybana Sankoh and Sam "Mosquito" Bockarie were withdrawn on 8 December 2003 after the Prosecution had confirmed their deaths, para. 5.
[668] Ibid, paras. 4, 2083, 2093, 2104; see also Ibrahim Abdullah, 'Bush Path to Destruction: The Origin and Character of the Revolutionary United Front (RUF/SL)' (1997) XXII (3/4) Africa Development 45.
[669] RUF Trial Judgment, n 158, para. 6.
[670] See *Prosecutor* v *Sesay & Ors* (Request for Leave to Amend the Indictment) SCSL-05-14-PT (9 February 2004) para. 4; the Prosecution specifically sought leave to add a new charge of 'Crimes Against Humanity: Other Inhumane Acts (forced marriage)'.
[671] RUF Trial Judgment, n 158, paras. 1348 and 1349.
[672] Ibid, para. 1295.
[673] Ibid.
[674] Ibid, paras. 1211, 1293, 1295, 1351, 1413.
[675] Ibid, para. 1468

attracted severe penalties, such as death or transfer to front lines.[676] Like the AFRC Appeal Chamber, the Trial Chamber found that the conjugal relationships were not consensual, as the coercive circumstances made genuine consent impossible.[677] Moreover, the marital status of some of the victims was regarded as additional proof of the lack of consent.[678]

Another SCSL case involving forced marriage of abducted women and girls was the CDF's case. In this case, however, the Trial Chamber stated orally that evidence would not be heard regarding crimes of a sexual nature and/or forced marriage despite its existence, as it was inadmissible under the current counts.[679] Like the AFRC and RUF's cases, the Prosecution had requested for leave to amend the Indictment to add four new counts relating to sexual violence. The Trial Chamber denied the motion because it was in violation of an accused's right not to be informed promptly and in detail of the nature and cause of the charges against him.[680]

In the *Charles Taylor's judgment*, remarkably, the SCSL Trial Chamber did not follow the precedent laid down by AFRC Appeal Chamber in *Brima's case*. The Chamber found the term forced married as a misnomer and used the term 'conjugal slavery' instead of marriage.[681] The refusal to follow the precedent in *Brima's case* was a failure on the part of both courts to recognise another way that women and girls suffered during the conflict. This attitude helped to reinforce the lack of respect for women's human rights in rural Sierra Leone, which is key to the harms women experienced before, during and after the war.

4.4. Reactions to Recognition of Forced Marriage as a Crime Against Humanity

The SCSL Appeal Chamber's recognition of forced marriage as a new crime against humanity was applauded as a 'landmark' decision by several scholars. However, less enthusiastic scholars support the AFRC Trial Chamber's ruling that forced marriage can be subsumed under the crime of sexual slavery or other sexual violence crimes. Park excitedly views the SCSL Appeal Chamber's decision as an 'an important step in advancing the human rights of girls and follows a growing trend in international criminal prosecution of gender offences;'[682] Clark calls it 'ground-breaking';[683] Jain 'a long overdue and

[676] Ibid. paras. 1413, 1467, 1472, 1581.
[677] Ibid, paras. 1470-1472.
[678] Ibid, para. 1412.
[679] CDF Appeal Judgment, n 648, para. 430.
[680] Ibid.
[681] See *Charles Taylor's case*, n 649, paras. 425, 427, 430.
[682] Augustine S. J. Park, 'Other Inhumane Acts': Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone' (2006) 15 Social Legal Studies 315, 325.
[683] Clark, n 662, 5.

welcome development' as well as a 'historic precedent;'[684] while Frulli considers it 'a land-mark decision.'[685] In a general comment, views the progress made in prosecuting gender crimes, such as forced marriage as 'unparalleled in history and establishes critical precedential authority for redressing these crimes in other fora and conflicts.'[686]

However, though excited about the progress made in the advancement of women's human rights, supporters of the AFRC Appeal Chamber's decision are divided on the exact categorization of forced marriage. The debate on whether it should be an 'other inhumane acts' under crimes against humanity or enumerated as a crime against humanity is unresolved. For the critics, the AFRC Appeal Chamber's categorization of forced marriage as an 'other inhumane acts' under crimes against humanity has been described as: ambiguous, inconsistent, legally and factually unsound, and offends the principle of legality of non-retroactivity, the prohibition on analogy and the requirement of specificity;[687] collapsing a gender-based crime into a sexual crime;[688] confusing jurisprudence and a significant but harmful step;[689] puzzling,[690] and a patriarchal definition.[691]

Specifically, the use of the same evidence under both the forced marriage and the sexual slavery headings has also been criticized. While Gong-Gershowitz calls this approach unclear and conflates forced marriage and sexual slavery,[692] Oosterveld disagrees and considers that it reflects the 'intersectionality of these crimes and therefore the actual experiences of girls and women in the Sierra Leone conflict.'[693] Arguing that the AFRC Appeal Chamber's reasoning distorts the distinctions between sexual slavery and forced marriage during armed conflict, Gong-Gershowitz suggests a clear definition of the crime of sexual slavery. She proposes defining sexual slavery broadly to encompass a 'forced conjugal association,' or alternatively, for the inclusion of evidence of forced marriage as an aggravating factor in sentencing for crimes of sexual violence.'[694]

---

[684] Jain, n 544, 1013, 1022.
[685] Frulli, n 663, 1033.
[686] See Askin, n 594, 288.
[687] Nicholas Azadi Goodfellow, 'The Miscategorization of 'Forced Marriage' as a Crime against Humanity by the Special Court for Sierra Leone' (2011) 11(5) Int.C.L.R 857, 858, 860.
[688] Oosterveld, n 126, 153, 154, 155.
[689] Elena Gekker, 'Rape, Sexual Slavery, and Forced Marriage at the International Criminal Court: How Katanga Utilizes a Ten-Year Old Rule but Overlooks New Jurisprudence' (2004) 25 Hastings Women L. J. 105, 130, 131.
[690] Frances Ngugen, 'Untangling Sex, Marriage and Other Criminalities in Forced Marriage' (2014) 6 Goettingen J. Int'l L. 13, 14.
[691] Toy-Cronin, n 529, 580, 589.
[692] See Jennifer Gong-Gershowitz, 'Forced Marriage: A "New" Crime Against Humanity?' (2009) 8 Nw U J Int'l Hum Rts 53, 73, 75.
[693] Oosterveld, n 663, 50, 72-73.
[694] Gong-Gershowitz, n 692, 76.

Admittedly, both crimes share similar characteristics, and the consideration of the same evidence in different charges has led to confusion, as reflected in the RUF Trial judgement. The Trial Chamber attempted to draw a distinction between sexual slavery and forced marriage. According to the RUF Trial Chamber, while sexual slavery involves the personal gratification of the perpetrators, in terms of provision of free domestic and sexual services, forced marriage involves that and much more. The RUF Chamber found that forced marriage involved a strategic plan to subdue and terrorize civilians, ensuing the devastation of families and communities and the isolation and degradation of individuals.[695] Significantly, though the RUF Trial Chamber's findings on the effect of use of the label 'wife' is like that of the AFRC Trial Chamber, their conclusions differ. Both Chambers agreed that the use of the term 'wife' reveal an intention to exercise ownership rights over the victims,[696] the *mens rea* of sexual slavery.

However, following the AFRC Chamber's ruling, unlike the AFRC Trial Chamber, the RUF Chamber concluded that the practice of forced conjugal relationships was forced marriage and not sexual slavery. This thesis believes that these abductions were purely mating arrangements, 'approved by the commanders' not just for sexual gratification and domestic services, but primarily to ensure the continuation of the fighters' family lineage.[697] Given the African male's notorious desire to leave behind male heirs to perpetuate his name, it is not absurd to suggest that the abduction of women and girls in Sierra Leone may have also been motivated by traditional notions of marriage and not sexual slavery, as discussed earlier on.[698]

The SCSL's categorization of forced marriage and the resultant challenges have been extensively discussed in academic writings,[699] so I will focus on some other aspects of the judgements that failed to advance women's human rights. Some of these failures I argue, contributed directly or indirectly to the harms experienced by the Bush wives, post conflict, as they promote patriarchal norms and attitudes. These attitudes reinforce lack of respect for women's human rights in rural Sierra

---

[695] RUF Trial J, n 158, paras. 1348 and 1349.

[696] The RUF Trial Chamber found that the effect of the deliberate and strategic use of the label 'wife' was to enslave and manipulate the women with the purpose of treating them like possessions; see Ibid, para. 1466.

[697] This view is based on the traditional notion of marriage as an alliance between two kinship groups, with the major purpose of ensuring procreation and survival of the groups or community. This notion is prevalent in traditional societies, such as Nigeria, Sierra Leone and other African countries, parts of Asia and the Middle East, interestingly alongside practices of modern marriages; see A. Phillips (ed), *A Survey of African Marriage and Family Life* (Oxford UP 1953) xv; H. Kuper, *The Swazi: A South African Kingdom* (Holt, Rinehart and Winston 1963) 22.

[698] See section 3.12.1.

[699] See Victoria May Kerr 'Should Forced Marriages be Categorised as 'Sexual Slavery' or 'Other Inhumane Acts' in International Criminal Law?' (2020) 35 (1) UJIEL 1; Jennifer Lincoln, '*Nullum Crimen Sine Lege* in International Criminal Tribunal Jurisprudence: The Problem of the Residual Category of Crime' (2011) 7(1) Eyes on the ICC 137; Goodfellow, n 687.

Leone, which is key to the harms women experienced before, during and after the war. The failures that I identified include a definition incorporating traditional gender roles,[700] and the failure to enter fresh convictions for the crime by the AFRC Appeal Chamber.

4.5. Patriarchal Definition of Forced Marriage

As we have seen above, challenges exist in defining conflict-related forced marriages to adequately reflect women's experiences, as well as the nature of the crime.[701] The thesis is concerned primarily with the aspects of forced marriage judgments that negatively impacts the human rights of the Bush wives, that is, its patriarchal definition. Patriarchal customary marriage traditions formed the basis of the definition of marriage in some cases of forced marriage tried by international criminal tribunals.

Forced marriage has been variously defined, as a sexual crime[702] or as a multi-layered crime that includes both sexual and non-sexual crimes.[703] As a sexual crime and its categorization as sexual slavery is not offensive, as it omits reference to performance of domestic chores as conjugal duties.[704] In these cases, domestic duties are separated from 'conjugal duties' and are often referred to as forced domestic labour. In the decision on the confirmation of charges against *Katanga & Anor*, for example, the ICC's Pre-Trial Chamber 1 seems to agree with the SCSL Trial Chamber that forced marriage is a form of slavery. It categorized forced marriage as sexual slavery and subsumed forced marriage under sexual slavery. According to the Chamber: 'sexual slavery also encompasses situations where women and girls are forced into marriage, domestic servitude or other forced labour involving compulsory sexual activity, including rape, by their captors'.[705] Similarly, in the *Charles Taylor's case*, the SCSL Trial Chamber used the term 'conjugal slavery' instead of marriage;[706] a term encompassing two forms of slavery, including sexual slavery and enslavement through forced domestic labor.

However, taking into consideration the multi-layered nature of the crime, some tribunals, such as the AFRC Appeal Chamber, incorporated traditional gender

[700] Toy-Cronin refers to it as a patriarchal definition; see Toy-Cronin, n 529, 580.
[701] Baumeister addresses these challenges in her book, Hannah Baumeister, *Sexualised Crimes, Armed Conflict and the Law: The International Criminal Court and the Definitions of Rape and Forced Marriage* (Routledge 2018) 1; Annie Bunting, 'Forced Marriage in Conflict Situations: Researching and Prosecuting Old Harms and New Crimes' (2012) 1(1) Can. J. Hum. Rts. 165; Jain, n 544.
[702] AFRC Trial Chamber Judgment, n 154, para. 710; *Charles Taylor's case,* n 649, paras. 425, 427.
[703] AFRC Appeal Chamber Judgment, n 176, paras. 181-185.
[704] For example, by the AFRC Trial Chamber J, n 154.
[705] *Prosecutor* v *Katanga & Anor* (Decision on the Confirmation of Charges) ICC-01/04-01/07 (30 September 2008) para 431.
[706] See n 649, paras. 425, 427, 430.

roles, in categorizing forced marriage as 'other inhuman acts.' For example, the AFRC Appeal Chamber in *Brima's case* relied on the Prosecutor's definition of marriage, based on pre-war Sierra Leone customary law marriages.[707] Although it contains both sexual and significant non-sexual elements,[708] the Prosecutor in his final brief offered 'a non-sexual definition of forced marriage':

> *... words or other conduct intended to confer a status of marriage by force or threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power against the victim, or by taking advantage of a coercive environment, with the intention of conferring the status of marriage.*[709]

He seems to have done so to distinguish forced marriage from sexual slavery and sexual violence.[710] The Prosecutor argued that the acts enumerated above are distinct from sexual acts, 'because they force a person into the appearance of marriage by threat or other coercion.' He argued that 'even if forced marriage usually involves sex, it has its own distinctive features…'[711] The Prosecutor considers the factual elements of forced marriage as not only or largely sexual in nature and stressed the multi-layered nature of forced marriage to include the imposition of conjugal status by coercion or threat; forced labour; reduction to a servile status; the practical impossibility of seeking familial assistance or attempting escape and the widespread discrimination against Bush wives which fuels prejudice against them in the community.[712]

Specifically, he emphasized the patriarchal house-hold duties that the Bush wives had to undertake: cooking, cleaning, laundry and child-rearing. Based on the Prosecutor's submission, the AFRC Appeal Chamber defined forced marriage, in the context of the Sierra Leone conflict as:

> *a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe*

[707] The Prosecution had earlier classified forced marriage under 'Sexual Violence' in *Prosecutor* v *Brima & Ors* (Amended Consolidated Indictment) SCSL-04-16-0078 (13 May 2004) paras. 52 – 57 < https://docs.rscsl.org/document/SCSL-04-16-0078 > accessed 12 July 2023.
[708] Oosterveld, n 126, 152.
[709] *Prosecutor* v *Brima & Ors* (Prosecution Final Trial Brief) SCSL-04-16-T (6 December 2006) para. 1009 < http://www.sierra-leone.org/Documents/Decisions/AFRC/613/SCSL-04-16-T-601.pdf> accessed 12 July 2023.
[710] Ibid, para. 1011
[711] Ibid, para. 1009.
[712] Ibid.

suffering or physical, mental, or psychological injury to the victim.[713]

The Appeal Chamber stipulated that 'no tribunal could reasonably have found that forced marriage was subsumed in the crime against humanity of sexual slavery'.[714] It identified two specific harms associated with forced marriage. They are the injuries stemming from being forced to perform a variety of conjugal duties, including regular sexual intercourse, forced domestic labour such as cleaning and cooking, forced pregnancy, and taking care of and bringing up the children of the 'marriage' and injuries arising from being labelled 'wife' and the resulting social ostracization.[715]

Accordingly, the AFRC Appeal Chamber concluded that forced marriage is not predominantly a sexual crime because sex is not the only incident of the forced relationship.[716] Similarly, in *Prosecutor* v *Ongwen*,[717] the Chamber incorporated 'conjugal duties' into its definition of forced marriage. It ruled that the central element of forced marriage is the imposition of 'marriage' on the victim, interpreted as 'the imposition, regardless of the will of the victim, of duties that are associated with marriage, as well as of a social status of the perpetrator's 'wife.'

Consequently, the patriarchal traditional duties of pre-war Sierra Leonean wives which would have otherwise been regarded as elements of 'forced labour' were wrongly incorporated into, and thus expanded the definition forced marriage. The current definition does not promote women's rights as it includes 'conjugal duties' which only serves to reinforce traditional gender roles, and highlights the subordinate position of women in society. Accordingly, Oosterveld argues that pre-war Sierra Leonean wives were 'largely seen as subordinate to men, [as in many patriarchal societies today] and therefore the title of 'wife' in wartime was an exaggerated (and somewhat perverted) extension of the duties of wives in peacetime.'[718] This supports my argument that the lack of respect for women's human rights in rural Sierra Leone, is key to the harms women experienced before, during and after the war.

However, Oosterveld's view of 'wives' in pre-war Sierra Leone, based on Bangura's expert evidence, is not uncommon. Traditional gender roles are not peculiar to and persist today in a number of Western societies as well as in

---

[713] AFRC Appeal Chamber Judgment, n 176, para. 196.
[714] Ibid, para. 132.
[715] Ibid, para. 199-201.
[716] Ibid para. 195.
[717] (Decision on the Confirmation of Charges) ICC-02/04-01/15-422-Red (23 March 2016), para. 93.
[718] See Oosterveld, n 126, 158-159.

contemporary African states. This would explain why 'bush-wives' as well as female sexual slaves are often compelled to perform 'household chores' usually associated with 'female duties.' This proves that lack of respect for women's human rights, like patriarchy, is a global phenomenon.[719]

Toy-Cronin's holds a contrary view, as she contends that forced marriage is distinct from crimes occurring within a forced marriage. She notes that for the Appeals Chamber 'it is tempting to include any crime that occurs within a forced marriage among the effects of the conferral of the status of marriage'.[720] In this context, the word 'effect' is synonymous with 'gravity and harm'.[721] She argues, correctly, that the fact that these crimes may occur within the context of marriage is due to 'culturally mandated roles', and their occurrence do not necessarily confer the status of a forced marriage.[722]

Toy-Cronin's view is supported by the Khmer Rouge's arrangement of forced marriage in Cambodia.[723] In this situation, the objective of the forced conjugal association, a state policy, was the production of children: the victims were expected to fulfil this goal. There was therefore no punishment for non-performance of domestic chores, but for refusal to engage in sexual intercourse.[724] This thesis therefore contends that a definition of forced marriage that includes such non-sexual aspects invariably excludes male victims who play very different 'culturally mandated role' in marriage. Not only does such a definition not fulfil the criteria of a universally acceptable precedent, it promotes the subordination of women which treaty bodies have criticized over time. In the context of discrimination against women, in its 2014 Concluding observations on Sierra Leone, the CEDAW Committee disapproved of:

> *...adverse traditional stereotypes regarding the roles and responsibilities of women and men in society and, in particular, in the family, and the persistence of patriarchal norms that reinforce male dominance, especially among rural communities...*[725]

[719] The differences are in the pressures and influences they are subjected to and is at variance with Western feminists' portrayal of the African woman as an oppressed and subjugated victim of a male dominated society. According to Ibru, '… there is no society in the world where women are treated equally as men.' See A. Ibru, (4th Guardian Annual Lecture, Lagos, July 1993).
[720] Toy-Cronin, n 529, 577.
[721] Goodfellow, n 687, 862.
[722] Toy-Cronin, n 529, 577.
[723] See Rachel P. Jacobs, 'Married by the Revolution: Forced Marriage as a Strategy of Control in Khmer Rouge Cambodia' (2022) 24(3) Journal of Genocide Research 357; Theresa De Langis, et al. 'Like Ghost Changes Body: A Study on the Impact of Forced Marriage under the Khmer Rouge Regime.' (Transcultural Psychosocial Organisation 2014) 28-30; Jain, n 544.
[724] Ibid.
[725] CEDAW/C/SLE/CO/6, 2014, n 50, para. 18 (a); see also CCPR/C/SLE/CO/1, 2014, n 56, para. 10.

Although, domestic chores were not mentioned, another CEDAW Committee Report, commenting on the 'Role of Gender and Stereotypes' in Burkina Faso, a West African state, listed cooking, childcare, washing, housecleaning, fetching water and firewood as domestic chores performed by women.[726] The inclusion of 'conjugal duties' in the definition of forced marriage, I argue, reinforced lack of respect for women's human rights in rural Sierra Leone, a key to the harms women experienced before, during and after the war.

I agree with scholars who suggest a new definition of forced marriage.[727] Analyzing the situation in Cambodia and Sierra Leone, Jain comes up with 'gender neutral' definition.[728] Unfortunately, the constitutive elements of the crime in her definition include '…acts of a sexual nature, domestic labour, child bearing and the rendering of other conjugal duties'.[729] This shows the difficulty of defining the concept of forced marriage without adding '…any crime that occurs within a forced marriage among the effects of the conferral of the status of marriage'.[730]

4.6. Failure to Enter Fresh Convictions

More importantly, the failure of the SCSL Appeal Chamber to enter fresh convictions for the crime of forced marriage in the *Brima's case*, was a major failure in doing justice to the victims.[731] Although, there is no bar to entering cumulative convictions for offences based on the same facts, the Appeals Chamber did not do this because it was convinced that:

> *...society's disapproval of the forceful abduction and use of women and girls as forced conjugal partners as part of a widespread or systematic attack against the civilian population, is adequately reflected by recognising that such conduct is criminal and that it constitutes an 'Other Inhumane Act' capable of incurring individual criminal responsibility in international law.*[732]

Chasing the Bush wives away from home bears no resemblance to and cannot be equated with 'society's disapproval of the forceful abduction and use of women

[726] See 'Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined Fourth and Fifth Periodic Reports of States Parties: Burkina Faso' (9 February 2004) UN Doc CEDAW /C/BFA/4-5; see also generally Medhanit A. Abebe, 'Climate Change, Gender Inequality and Migration in East Africa' (2014-2015) 4 Wash. J. Envtl. L. & Pol'y 104, 116, 117, 136.

[727] For definitions of peace time forced marriage see Geetanjali Gangoli et al, 'Understanding Forced Marriage: Definitions and Realities' in Aisha K Gill and Sundari Anitha (eds.), *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (2011) 25.

[728] Jain, n 544, 1031-1032.

[729] Ibid, 1031.

[730] Toy-Cronin, n 529, 577.

[731] AFRC Appeal Chamber J, n 176, para. 202.

[732] Ibid.

and girls as forced conjugal partners…' Rather, the mental trauma and the stigmatization they faced by being labelled as rebel 'wives' which made it difficult for them to reintegrate into their communities,[733] was clearly society's disapproval of them and their children. In addition, the fact that 'the phenomenon of 'Bush wives' was so widespread throughout the Sierra Leone conflict that the concept of women being 'taken as wives' was well-known and understood',[734] makes societal disapproval of Bush wives incomprehensible. Moreover, given the large number of perpetrators of forced marriage that are walking around free, the conviction of more offenders would represent some relief to their victims.

In addition, the long sentences already imposed by the AFRC Trial Chamber might have been considered adequate punishment for the accused persons.[735] However, it is arguable whether justice was done or even seen to be done by the victims, their families, and the community at large. It is noteworthy however that the SCSL made up for the absence of conviction in the AFRC case in the subsequent RUF trial judgment.

4.7. Slow Prosecution of Forced Marriages

It is worrisome that some international criminal tribunals that have heard evidence of forced marriage, have not considered *Brima's case* as a precedent. This places this land-mark prosecution in more of an exception category.[736] The persuasive precedent set by the AFRC Appeals Chamber Judgment and the RUF Trial Chamber Judgment[737] is not being followed by tribunals that insist on categorizing forced marriage as sexual slavery. By focusing solely on its sexual elements, the categorization of forced marriage as 'sexual slavery', diminishes its significance as a 'new' international crime. Moreover, increased visibility ensures the prosecution of perpetrators, thus reducing the culture of impunity for conflicted related sexual violence.

Whatever the reasons for such deviations from the SCSL's landmark precedent on forced marriage, the significance is that even as forced marriage continues to be committed during armed conflicts, fresh convictions are likely to be few. Consequently, the importance and prominence attached to this crime will gradually diminish. For the Bush wives, justice may continue to elude them, as they have been denied access to justice, so far, due to the Statute's limitation to

[733] Ibid. para. 193.
[734] Ibid. para. 1296; RUF Trial Judgment, n 158, para. 1295.
[735] Alex Tamba Brima and Santigie Borbor Kanu - 50 years each, and Bazzy Kamara- 45 years, ibid, para. 307.
[736] Amy Palmer, 'An Evolutionary Analysis of Gender-Based War Crimes and the Continued Domestic Violence of "Forced Marriage"' (2009) 7 Nw U J Int'l Hum Rts 133, 136.
[737] For other tribunals or the International Criminal Court (ICC) to prosecute forced marriage as a crime against humanity under international law.

persecuting only a few persons.[738] More importantly, as discussed in chapter three, despite the UN's objection, and contrary to the country's treaty obligations, and compelling judicial precedents, though persuasive, the government of Sierra Leone, 'in the interest of peace', retained the amnesty provisions.

Since the war ended the government neither repealed nor amended **the Lomé Peace Agreement (Ratification) Act**. Sierra Leone's undertaking to ensure that no official or judicial actions would be taken against members of the rebel groups, appears to have stalled the path to justice for victims of forced marriage. Notwithstanding the ostensible constraints to obtaining justice in the domestic arena, there are alternative avenues for such victims to seek redress. Having dealt with domestic remedies in chapter three, this chapter will explore alternative routes for legal access regarding the crime of war time forced marriage.

4.8. Alternative Redress Avenues for the Bush wives.

For the Bush wives, the most convenient access for violation of human rights claims should be the local courts, as Sierra Leone has domesticated relevant norms of international human rights law. So, irrespective of the amnesty clauses in the **Amnesty Act**, reliance on human rights law gives victims the opportunity to approach local courts for redress with respect to forced marriage and other crimes committed during the war. In addition to the domestic courts, there are individual complaints mechanisms of regional human rights tribunals that entertain claims by individuals.

4.8.1. Individual Complaints Mechanisms of Regional Human Rights Tribunals

The ACHPR, the African Court of Human and Peoples' Rights, and the Economic Community of West African States Court of Justice (ECCJ) are examples of regional judicial and quasi-judicial bodies where claims may be filed by citizens of Sierra Leone.[739] An analysis of these bodies will help determine their suitability and effectiveness, especially in respect of the Bush wives' making claims relating to the perpetrators of sexual violence during the armed conflict.

It is important to note that, for victims seeking redress, there are advantages of relying on human rights law instead of international humanitarian law in armed conflict matters. The former provides for additional substantive rights and it will sometimes impose additional substantive obligations when compared with the

[738] The court indicted only 14 persons, two of whom, the RUF leader Foday Sankoh and his former commander Sam Bockarie died before their trial began, while the third, Hinga Norman, the putative leader of the CDF died during his trial, see < https://rscsl.org/ > n 636.

[739] Comparative bodies include the European Court of Human Rights, the Inter-American Court of Human Rights, and the Inter-American Commission on Human Rights.

later.[740] For example, the ICJ case of *Georgia* v *Russia,*[741] brought under the Convention on the Elimination of Racial Discrimination, and the two Genocide Convention cases of *Bosnia* v *Serbia*[742] and *Croatia* v *Serbia*[743] show that victims may gain additional procedural and jurisdictional advantages by relying on human rights treaties rather than IHL.

IHL seeks to protect women from sexual violence rather than prohibiting such acts, while human rights law has specific provisions protecting women, as well as punishing perpetrators of sexual violence. Akande views the main advantage to be derived from reliance on human rights law and treaties as the additional procedural rights that this body of law often confers. He observes:

> *Human rights law provides individuals with access to international/regional judicial and quasi-judicial bodies for the purpose of making claims relating to conduct of combatants who have been granted amnesty. Under IHL, however, such access is absent, but States may, and have in the past created organs such as the Eritrea-Ethiopia Claims Commission which may entertain claims by individuals.*[744]

Since State parties usually domesticate norms of international human rights law, individuals relying on the national legal systems have access to these norms at the domestic as well as the international/regional scene. Analysing the ease of access to relevant regional judicial and quasi-judicial bodies will further help to unearth how domestic and international leal framework failed to advance justice for the Bush wives.

4.8.1.1. The African Court on Human and Peoples' Rights (African Court)

The African Court on Human and Peoples' Rights is a continental court established by the African Union, aimed at ensuring the protection of human and peoples' rights in Africa.[745] It complements and reinforces the functions of the African Commission on Human and Peoples' Rights. The **African Court** has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the **African Charter**, **the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an**

[740] Dapo Akande, 'The Application of Human Rights Treaties in Wartime' (*EJIL: Talk!*, 12 December 2008) <https://www.ejiltalk.org/the-application-of-human-rights-treaties-in-wartime/> accessed 1 September 2020.
[741] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Georgia* v *Russian Federation*) (Preliminary Objections, Judgment) [2011] ICJ Rep 70.
[742] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v Serbia and Montenegro*) (Judgment) [2007] ICJ Rep 43.
[743] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Croatia v Serbia*) (Preliminary Objections, Judgment) [2008] ICJ Rep 412.
[744] Akande, n 740.
[745] The African Court was established by the **Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights** (adopted 10 June 1998, entered into force 25 January 25, 2004, upon ratification by more than 15 AU member states).

African Court on Human and Peoples' Rights and any other relevant human rights instrument ratified by the country concerned.[746] However, individuals and NGOs with observer status before the Commission can only make complaints and/or applications where the concerned member state has signed an additional declaration pursuant to article 34(6) of the **Protocol** ('Additional Declaration'). This declaration is to accept the jurisdiction of the African Court to hear cases brought by individuals and NGOs.[747]

Sierra Leone has signed but has not ratified the above **Protocol**,[748] so it is yet to sign the additional declaration. Accordingly, Sierra Leone disallows its citizens and NGOs from bringing cases directly to the Court. The citizens of Sierra Leone are for that singular reason deprived of the right to have their complaints heard by the Court, unless such claims are referred to the Court by Sierra Leone itself, the ACHPR or the African Intergovernmental organizations. The chances of Sierra Leone making such a move on behalf of victims of forced marriage are slim, considering the government has not repealed the amnesty provisions that prevent perpetrators from being prosecuted. In addition, the government has done little to specifically relieve the plight of victims, by providing adequate reparations and rehabilitation.[749] Whatever assistance they have received has been from NGOs, who are limited in outreach because of their dependence on international donors.[750]

Even if the claims are referred to the Court by the ACHPR or any African Intergovernmental organizations, access to the court is predicated on fulfilling

---

[746] Please note that although, art. 2 of the **Protocol on the Statute of the African Court of Justice and Human Rights** (adopted 1 July 2008) merges the **African Court on Human and Peoples' Rights** and the **Court of Justice of the African Union** into one single court: the **African Court of Justice and Human Rights**, this court is not yet functional, see African Union (Assembly of Heads of State and Government) 'Decision on the Single Legal Instrument on the Merger of the African Court on Human and Peoples' Rights and the African Court of Justice. Doc. Assembly/AU/13 (XI) (Sharm El-Sheikh, Egypt, 2008) (Assembly/AU/Dec.196(XI))].
[747] Article 5(3) of the **Protocol**; as of April 2022, only eight countries had made such a declaration, see African Court on Human and Peoples' Rights, 'Declarations' < https://www.african-court.org/wpafc/declarations/ > accessed 12 November 2020; see also International Commission of Jurists, 'Withdrawal of States from African Court a Blow to Access to Justice in the Region' (1 May 2020) < https://www.icj.org/withdrawal-of-states-from-african-court-a-blow-to-access-to-justice-in-the-region/ > accessed 12 November 2020.
[748] See OAU/AU Treaties, Conventions, Protocols & Charters < https://au.int/treaties > accessed 12 November 2019.
[749] See para. 3.10.4.
[750] For example, the only NGOs providing curative measures for sexual violence survivors, the Rainbo Centers and Health Poverty Action, are not available all over the country. There are currently 5 Rainbo Centres in Freetown, Kono, Kenema, Bo and Makeni. The Rainbo Initiative advocates for free health care treatment for victims/survivors of GBV in all public hospitals, and for access to justice and speedy trials of all GBV cases. See Rainbo Initiative, 'What We Do' < https://rainboinitiativesl.org/advocacy-policy-influence/ > accessed 18 May 2023; see also MSWGCA, *Sierra Leone National Action Plan on GBV: Building a Better Sierra Leone Free from Violence against Women and Children, 2012-2016* (MSWGCA September 2012) 6.

certain conditions, the most important of which is the exhaustion of local remedies.[751] The rule of exhaustion of local remedies states that:

> *a State should be given the opportunity to redress an alleged wrong within the framework of its own domestic legal system before its international responsibility can be called into question at [the] international level*[752]

This rule which was used in classic international law to protect state sovereignty against 'excessive infringement by state-to-state claims on behalf of private individuals,'[753] has been incorporated into human rights instruments. Article 56(5) of the **African Charter**, states that the ACHPR shall consider a communication relating to human and peoples' rights after the applicant has exhausted local remedies, *'if any, unless it is obvious that this procedure is unduly prolonged.'*[754] The addition of the proviso is in the recognition that, though the requirement of exhaustion of local remedies is a conventional provision, it should not constitute an unjustifiable impediment to access to international remedies.

A 'local remedy' has been defined as 'any national domestic judicial or legal mechanism[s] that ensure the settlement of disputes and protection of rights.'[755] Such a remedy must also satisfy certain criteria; what the arbitral commission in *the Ambatielos Claim* called the 'essentialness' of remedies.[756] The ACHPR has in a number of cases identified*: '[t]hree major criteria [that] could be deduced . . . in determining this rule, namely: the remedy must be available, effective and sufficient.'*[757]

The government's assurance to members of rebel groups that no official or judicial action would be taken against them in respect of anything done by them in pursuit of their objectives, constitutes a wilful obstruction of legal procedures. For the victims of forced marriage, the logical conclusion would be that local

---

[751] For details see Nsongurua J. Udombana, 'So Far, So Fair: The Local Remedies Rule in the Jurisprudence of the African Commission on Human and Peoples' Rights' (2003) 97 AJIL 1.
[752] Trindade A. A. Cançado, 'The Application of the Rule of Exhaustion of Local Remedies in International Law' in D. W. Bowett, (1983) 54 (1) *British Ybk Intl L* 268–269; Trindade A. A. Cançado, 'Exhaustion of Local Remedies in International Law and the Role of National Courts' (1978) 17 (3/4) *Archiv Des Völkerrechts* 333, 334.
[753] Jost Delbrück, 'The Exhaustion of Local Remedies Rule and the International Protection of Human Rights: A Plea for a Contextual Approach' in Jürgen Jekewitz et. al. (eds.), *Des Menschen Recht Zwischen Freiheit und Verantwortung* (Duncker & Humblot 1989) 213, 217.
[754] **African Charter**, art. 56.
[755] Minority Rights Group, 'Guidance: Exhausting Domestic Remedies under the African Charter on Human and Peoples' Rights' <https://minorityrights.org/> accessed 10 September 2020; see also Frans Viljoen, 'Admissibility Under the African Charter' in Malcolm D. Evans & Rachel Murray (eds.), *The African Charter on Human and Peoples' Rights: the System in Practice, 1986–2000* (Cambridge UP 2002) 61, 83–84. This definition, however, does not cover non-judicial remedies. Domestic remedies are considered exhausted if all levels of national courts have been petitioned.
[756] *The Ambatielos Claim (Greece, UK of Great Britain and Northern Ireland)* (1956) 12 RIAA 83, 120.
[757] *Jawara* v *The Gambia* (1999-2000) Afr. Ann. Act. Rep, Annex V (ACHPR), para. 31, cf. *Hashman & Anor* v *United Kingdom* (2000) 30 EHRR 241; *Steel & Ors* v *UK* (1999) 28 EHRR 603; see also *Anuak Justice Council* v *Ethiopia* [2006] ACHPR 69, para. 51.

remedies are not available, effective, and sufficient. This assertion is supported by the ACHPR's ruling in *Amnesty Int'l & Ors* v *Sudan* that: it 'does not hold the requirement of exhaustion of local remedies to apply literally, especially in cases where it is 'impractical or undesirable' for the complainants or victims to seize the domestic courts.'[758]

Furthermore, in cases of serious and massive violations, where it is impossible to identify all the victims, as in the case of conflict-related forced marriages in Sierra Leone, the ACHPR has regarded local remedies as non-existent. This is illustrated in the *Malawi African Association's* case, where the Commission:

> *...does not believe that the condition that internal remedies must have been exhausted can be applied literally to those cases in which it is 'neither practicable nor desirable' for the complainants or the victims to pursue such internal channels of remedy in every case of violation of human rights. Such is the case where there are many victims.* [759]

The Commission added that:

> *The gravity of the human rights situation in Mauritania and the great number of victims involved renders the channels of remedy unavailable in practical terms, and, according to the terms of the Charter, their process is 'unduly prolonged.*[760]

Following the precedent in Mauritanian case, I argue that the amnesty law adopted by Parliament of Sierra Leone renders all internal remedies 'unavailable in practical terms,' and any judicial process initiated would be 'unduly prolonged'. Thus, the ACHPR or any African Intergovernmental organizations may succeed in filing claims with the African Court on behalf of the victims of forced marriage.

4.8.1.2. The African Commission on Human and Peoples' Rights.

The ACHPR is part of the African regional system of human rights, which is based on the **African Charter**.[761] Before the June 1998 establishment of the African Court on Human and Peoples' Rights, the ACHPR was the only institutional body for the implementation of the rights guaranteed in the African Charter. Since its inception, the Commission has successfully addressed individual complaints of human rights violations against their governments.

However, the chances of victims of human rights violations holding their governments accountable through this mechanism has currently been

---

[758] *Amnesty Int'l & Ors* v *Sudan* (1999) Comm. Nos. 48/90, 50/91, 52/91, 89/93, para. 38.
[759] *Malawi Afr. Ass'n* v *Mauritania*, n 406, para. 85.
[760] Ibid.
[761] **African Charter**, art. 30.

significantly diminished by a recent AU decision. Citing the overlap in mandates as the basis for a review, the 2018 African Union Summit, held in Nouakchott, Mauritania, severely undermined the independence and mandate of the ACHPR. The Executive Council adopted a decision,[762] endorsing some 'worrying recommendations.'[763]

These recommendations are now binding AU decisions or directives,[764] including the decision to review the interpretative mandate of the ACHPR *'in light of a similar mandate exercised by the African Court [on Human and Peoples' Rights] and the potential for conflicting jurisprudence.'*[765] These decisions are likely to restrict access to the Commission and deny victims of human rights violations the right to effective remedies. However, victims of forced marriage in Sierra Leone, who have no pending cases before the Commission, may still seek redress by approaching the ECOWAS Community Court of Justice.[766]

4.8.1.3. ECOWAS Community Court of Justice

The Economic Community of West African States[767] was established by virtue of article 1 of the Treaty of Lagos[768] to promote the socio- economic integration of Member States of the Community, of which Sierra Leone is a member. The Community Court of Justice was created as the principal legal organ of the Community.[769] The **ECCJ** exercises jurisdiction over the human rights situation of member states insofar as there is an alleged violation. What makes it attractive for all litigants, is that it does not restrict its competence to human rights compliance with economic freedoms. Indeed, the provisions of the new articles 9(4) and 10 of the **2006 Supplementary Protocol of the Court** do not set any boundaries for the court in terms of competence partitioning.

A survey of the cases already decided by the **ECCJ** demonstrates that the court has no limitations whatsoever in its human rights mandate. Examples include its recent decisions finding violation of human rights for the failure of Niger to

---

[762] AU Executive Council, 'Decision on the Report on the Joint Retreat of the Permanent Representatives' Council (PRC) and the ACHPR, DOC.EX.CL/Dec.1089 (XXIII) i' EX.CL/Dec.1015(XXIII) (Nouakchott, 28-29 June 2018), art. 7(3).

[763] Japhet Biegon, 'The Rise and Rise of Political Backlash: African Union Executive Council's Decision to Review the Mandate and Working Methods of the African Commission' (*EJIL: Talk!*, 2 August 2018) < https://www.ejiltalk.org/the-rise-and-rise-of-political-backlash-african-union-executive-councils-decision-to-review-the-mandate-and-working-methods-of-the-african-commission/> accessed 12 December 2020.

[764] See African Union, **Rules of Procedure of the Executive Council, 2019**, rule 34 and the **Constitutive Act of the African Union** (adopted 1 July 2000, entered into force 26 May 2001) art. 23(2).

[765] Ibid, n 762.

[766] Hereinafter **ECCJ**; The 2018 decision would however not affect victims who had sought redress before that date.

[767] Hereinafter **ECOWAS.**

[768] **Treaty of the Economic Community of West African States** (adopted 28 May 1975).

[769] Pursuant to Articles 6 and 15, **Revised Treaty of ECOWAS** (24 July 1993).

prevent the practice of slavery;[770] and for the detention without trial of a Gambian journalist.[771] The emergence of the **ECCJ** is therefore a welcome development for the Bush wives, given the poor human rights history of African domestic courts, and the weak supervisory institutions of the continent-wide African human rights system.[772]

However, a drawback of the **ECCJ** is that unlike the **African Court on Human and Peoples' Rights**, there is no provision for legal assistance to indigent litigants.[773] Considering that the Bush wives are at the lower end of the economic band, the omission in **not** creating room for legal assistance translates to their disempowerment. Another concern is that the court does not entertain appeals against decisions of national courts, and it cannot overturn the decision of a national court.[774] So, the court may not entertain any suits that had been tried by the courts of Sierra Leone. However, the Court hears cases not previously heard by national courts, or at least, in which the issue in contention had not been addressed by a national court. For example, the Court entertained the case of *Koraou* v *Niger*,[775] even though aspects of the facts had previously been tried in a Nigerien court.

Thus, because the **ECCJ** shares jurisdiction with the national courts, the Bush wives may submit cases to the **ECCJ** without any prior reference to a Sierra Leonean court. The fact that there is no requirement for the exhaustion of local remedies before a case alleging human rights violation is brought before the ECCJ, allows for easy access. This fact also frees prospective litigants of the impediments of spending time and resources in first pursuing domestic remedies; a positive feature for litigants, such as the Bush wives with meagre resources.

4.9. Conclusion

Applying the literature on women's human rights to the Sierra Leone situation, and using the SCSL decisions on forced marriage as a case study, this chapter attempted to prove that both domestic and international legal frameworks did not provide effective legal redress to the victims of forced marriage. The SCSL land-mark judgement recognizing forced marriage as a crime against humanity has not

[770] *Koraou* v *Niger* ECW/CCJ/APP/08/08 (27 October 2008).
[771] *Manneh* v *The Gambia* (2008) AHRLR 171 (ECOWAS).
[772] Vincent O. Nmehielle, 'Development of the African Human Rights System in the Last Decade' (2004) 11(3) Human Rights Brief 6, 11; Makau wa Mutua, 'The African Human Rights System: A Critical Evaluation' Prepared for United Nations Development Programme, Human Development Report 2000, 1, 2-3ff < https://core.ac.uk/reader/6248864> accessed 21 August 2021; see also Katrin Nyman-Metcalf and Ioannis Papageorgiou, 'Why Should We Obey You? Enhancing Implementation of Rulings by Regional Courts.' in *African Human Rights Yearbook* (Pretoria University Law Press 2017) 167, 172.
[773] Compare with the 2008 **Interim Rules of the African Court on Human and Peoples' Rights**, art. 31.
[774] See *Keita* v *Mali* (Judgment) ECCJ, ECW/CCJ/APP/05/06 (15 May 2006) para 31.
[775] Ibid, n 770.

led to positive outcomes for the Bush wives. Forced marriage as an international crime remains controversial because of competing judicial and academic views on its proper classification. Justice for women and girls in conflict zones and ending impunity for these atrocities will therefore involve greater judicial and legislative emphasis on the recognition of the associated harms that infringe the internationally recognized women's human rights.

Notwithstanding, the fact that many perpetrators are free due to the inability or unwillingness of the government of Sierra Leone to hold them accountable, the Bush wives may still obtain relief through the individual complaints' mechanisms of regional human rights tribunals: the ACHPR, the African Court of Human and Peoples' Rights, and the ECCJ. Although, these tribunals entertain claims by individuals, obstacles exist, though not insurmountable, for the Bush wives to have their cases heard.

5. Chapter Five: Bush wives and the Sierra Leone Truth and Reconciliation Commission

5.1. Introduction

The main argument of this thesis is that lack of respect for women's human rights in rural Sierra Leone is key to the harms women experienced before, during and after the war. Entrenched patriarchal power structures exacerbated existing injustices and created new ones for the Bush wives. An important factor that influenced the injustices the Bush wives suffered was that despite Sierra Leone's commitment to gender equality, the SL TRC accommodated and reinforced rather than challenge and change patriarchal norms and attitudes regarding women.

This chapter will discuss, *inter alia*, the almost exclusive reliance of the SL TRC on customary law for the design and implementation of transitional processes. The application of customary law without subjecting it to a human rights standard, I argue, led to its preoccupation with public harms and the 'primary' conflict. By so doing, the Commission, I will argue further, failed to take into consideration the implications of private harms for female victims of sexual violence, and particularly the victims of forced marriage. It did not effectively protect and empower the women who had been victims of sexual violence during the proceedings.

I am discussing this matter to demonstrate how the SL TRC, a mechanism of international and transitional justice, failed to facilitate gender justice. My aim is to prove that failure of transitional institutions to critically address discriminatory practices against rural women, as discussed in the literature, ended up exacerbating existing injustices of the absence of women and women's voices, and created negative situations that forced the Bush wives from their homes.

Several scholars have argued that legal standards and transitional justice mechanisms tend to exclude women, thus contributing to further marginalisation of women post-conflict.[776] In a 2006 study of truth commissions, Nesiah concluded that 'many commissions have failed women – the crimes they have suffered are under-reported, their voices are rendered inaudible, their depiction in commissions' reports is one-dimensional, and their needs and goals are deprioritized in recommendations for reparations, reform and prosecution.'[777] She noted that a number of truth commissions made efforts to incorporate innovative

[776] See Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (Routledge 2011) 85-86; see also Reilly, n 534, 155, 164ff; Kimberly Theidon, 'Gender in Transition: Common Sense, Women and War' (2007) 6(4) Journal of Human Rights 453, 458.
[777] Nesiah, n 1, 41.

gender strategies into their processes, including specialized staff and training, gender specific mandates as well as devoting significant space to gender issues in their final reports. These laudable strategies have helped but have not successfully removed major barriers to the full realisation of women's rights in transitional processes. So, contrary to the expected emphasis on women's conflict experiences and their post-conflict needs, some truth commissions did not fully focus on women's rights, but rather adopted processes that reinforced the subordinate status of women in society.

In Sierra Leone for example, the **Sierra Leone Truth and Reconciliation Commission** incorporated innovative gender strategies into their processes and devoted an entire chapter to gender issues in their final reports.[778] However, although several scholars consider the SL TRC as unique because of 'its extensive focus on gender and the widespread incidents of sexual and gender-based violence committed in the conflict,' they are quick to note that this does not automatically translate to its being successful.[779]

The local institutions and local traditions adopted by the **SL TRC** did not yield gender neutral outcomes, since the community leaders were made up almost exclusively of men, who uphold patriarchal traditions and undervalue women's rights. The absence of a gender perspective in these community-based approaches is because of their customary law foundation. The application of customary law frequently results in gender discrimination. As discussed in chapter three, this is because 'it developed in an era dominated by patriarchy some of its norms conflict with human rights norms as guaranteeing gender equality.'[780]

The main argument of this chapter is that despite Sierra Leone's commitment to gender equality,[781] the **SL TRC** accommodated and reinforced rather than challenge and change patriarchal norms and attitudes in practice. I will also argue that its almost exclusive reliance on customary law, without the usual checks and balances, for the design and implementation of transitional processes, led to a preoccupation with public harms and the 'primary' conflict. Thus, the Commission failed to consider the implications of private harms for female victims of sexual violence, and particularly the victims of forced marriage.

---

[778] 3b (3) TRC Report, n 116.

[779] Kirsten Ainley et. al., 'Transitional Justice Accountability and Peacebuilding in Post-Conflict Sierra Leone' in Kirsten Ainley et. al. (eds), *Evaluating Transitional Justice Accountability and Peacebuilding in Post-Conflict Sierra Leone* (Palgrave Macmillan 2015) 2.

[780] Muna Ndulo, *African Customary Law, Customs, and Women's Rights* (Cornell Law Faculty 2011) 187 <http://scholarship.law.cornell.edu/facpub/187> accessed 2 May 2021.

[781] Evidenced by its ratification and adoption of several regional and international instruments on women's rights, including **CEDAW** and the **Maputo Protocol**.

In seeking to demonstrate how the **SL TRC** as a mechanism of international and transitional justice, failed to facilitate gender justice, this chapter will examine the cultural dynamics that influenced the transitional process in Sierra Leone. This will involve the failure of the **SL TRC** to critically address women's concerns, and particularly how the issue of discrimination against Bush wives, ended up exacerbating existing injustices, such as entrenched patriarchal power structures, and creating new ones.

Consequently, the **SL TRC** failed to fully achieve its statutory object, *inter alia,* to break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their stories, and to respond to the needs of the victims. It also failed to promote healing and reconciliation and to prevent a repetition of the violations and abuses[782] suffered by the victims of forced marriage. This does not mean that criticisms of the **SL TRC** negate the positive outcomes of transitional justice mechanisms in Sierra Leone and other countries. However, by acknowledging these criticisms, transitional justice can be adapted to allow a wider perspective on women's human rights, leading to further positive developments in the gender aspect of transitional justice.

At this juncture, it is pertinent to note some of the challenges faced by the **SL TRC**. It recognized the primary objective of customary law as the restoration of community well-being rather than retribution.[783] However, the sanctions and dispute resolution mechanisms employed focused on the quick resolution of conflicts and usually led to injustice.[784] In Sierra Leone, the **SL TRC** was granted only one year to complete its mandate, with the possibility of a six-month extension.[785] The hasty completion of its major operations: recruitment, training, investigation and public hearings in eight months, definitely affected its effectiveness. It could not possibly have done a good job in eight months. As MacKenzie and Sesay aptly noted, the writing of the final report, a less financially demanding job, took longer than the principal work of the **SL TRC**.[786]

Another challenge confronted by the SL TRC was inadequate funding. The short time spent on its major operations was due to a shortfall in its funding.[787] In

[782] See the **TRC Act**, s. 6 (1).
[783] Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Chapter 3: Recommendations) (Volume 2, Graphic Packaging Ltd. 2004) para. 178.
[784] As discussed below.
[785] **TRC Act**, s 5(1).
[786] Megan MacKenzie and Mohamed Sesay, 'No Amnesty from/for the International: the Production and Promotion of TRCs as an International Norm in Sierra Leone' (2012) 13 International Studies Perspectives 146, 163.
[787] The Commission was only able to access total funding of between US$4 million and US$8 million of its proposed US$10 million budget, resulting in a significant cut in its mandate. Compared to around US$250 million for the SCSL that operated alongside the SL TRC, and an annual budget of US$18 million for the South African TRC between 1996 and 2002, the inadequate funding had an adverse effect on its operations and severely

addition, the seventy statement takers hired to investigate areas where crimes had taken place had no previous training, received very little training, and almost none had served on a similar body before.[788] Yet these unskilled persons recommended the venues of the district public hearings as well as recorded the statements of those willing to share their stories but who lived far away from the venues of public hearing. In practical terms this meant that by the time the district hearings were due to begin in April 2003, very few statements had been collected and commissioners seldom had time to review or read those statements that had been obtained before the hearings.[789]

This chapter is divided into three broad sections. The first section is a brief overview of the establishment and object of the **SL TRC**. This will help to clarify the argument that it failed to fulfil its object with respect to the needs and expectations of the female victims of sexual violence. The second section will be an analysis of the validity of the various community-based processes or local traditions and institutions that the **SL TRC** incorporated into its proceedings. Local traditions are usually discriminatory against women in general, and unmarried mothers in particular.

I will argue that one of the consequences of the absence of women's voices during the **SL TRC** hearings is the widespread belief that survivors of sexual violence were not victims but rather willing collaborators. I will argue that truth matters to women, and that in the absence of reliable oral testimonies, the **SL TRC** could not have created an impartial historical record. I will argue that not applying a standard test such as the repugnancy test led to the failure of the **SL TRC** to, *inter alia*, discredit and debunk the lies peddled about the victims. These lies

---

diminished its capacity to fulfil its mandate. The inadequate budget affected its effectiveness, as the regional offices were largely left to run on nothing or very little. See William Schabas, 'The Special Court for Sierra Leone: Testing the Waters: Conjoined Twins of Transitional Justice?' (2004) 4 JICJ 1082, 1088-1090; Tim Kelsall, 'Politics, Anti-Politics, International Justice: Language and Power in the Special Court for Sierra Leone' (2006) 32 Rev.Int'l Stud. 587, 588; Chris Mahony and Yasmin Sooka, 'The Truth about the Truth: Insider Reflections on the Sierra Leonean Truth and Reconciliation Commission' in Kirsten Ainley *et. al.* (eds), *Evaluating Transitional Justice: Accountability and Peacebuilding in Post-Conflict Sierra Leone* (Palgrave Macmillan 2015) 35, 39.

[788] William A Schabas, 'The Sierra Leone Truth and Reconciliation Commission' in N. Roht-Arriaza and J. Mariezcurrena (eds), *Transitional Justice in the 21st Century* (Cambridge UP 2006) 25.

[789] The initial preparatory period of three months granted to enable the **SL TRC** secure funding for its operation was obviously not enough, given the large amount of money needed. Additionally, the proposed sources of funds listed in s 12 (1) of the **TRC Act**: The Sierra Leone government, foreign governments, intergovernmental organizations, foundations and non-governmental organisations, do not possess unlimited funds, and have other more pressing commitments, such as the **SCSL**. As Osiel noted, international transitional justice institutions are usually given priority, in terms of financial and ideological support; see Mark Osiel, *Making Sense of Mass Atrocity* (Cambridge UP 2009) 156ff. The simultaneous functioning of the **SCSL** (with a higher operating budget) and the **SL TRC** also took its toll on the later, marginalizing it, both in its budget and its mandate; for details see Schabas, Kelsall, Mahony and Sooka, n 787 and Franssen, n 268, 157.

contributed substantially to their rejection and the unjustified discrimination they faced.

Finally, the third section concludes that the **SL TRC**'s emphasis on the reconciliation of male ex-combatants, who were perceived as more useful to society than women, led to the gross marginalization of female victims of forced marriage. By promoting such negative patriarchal culture, the **SL TRC** failed to respond to the needs of the victims. Furthermore, it failed in its statutory object to promote healing and reconciliation and to prevent a repetition of the violations and abuses[790] suffered by the victims of forced marriage.

5.2. The Sierra Leone Truth and Reconciliation Commission[791]

As discussed earlier, on 7 July 1999, the government of Sierra Leone and the Revolutionary United Front rebel group signed the **Lomé Peace Agreement**.[792] The **1999 Lomé Peace Agreement (Ratification) Act** was a product of the ratification and passing into law of the Agreement by the Sierra Leone Parliament, on 18 July 1999.[793] The **Amnesty Act** brought the aborted peace deal one step closer to reality as it created a transitional justice mechanism, the **Sierra Leone Truth and Reconciliation Commission**.[794]

The **2000 Sierra Leone Truth and Reconciliation Commission Act** was enacted on 22 February 2000 to establish the Truth and Reconciliation Commission in line with article XXVI of the **Lomé Peace Agreement**.[795] The **SL TRC** was established as one of several 'structures for national reconciliation and the consolidation of peace'[796] by virtue of article XXVI of the **Lomé Peace Agreement**. The SL TRC was set up:

> *…to 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.*[797]

The 'object' of the **SL TRC** is broken down into fine distinct elements in Part V of the Act, which deals with the 'Report and Recommendations.' They are

---

[790] See **TRC Act**, s. 6(1).

[791] According to the **SL TRC**, the 'mandate', 'object' and 'functions' of the SL TRC appear to mean the same thing, as there is no meaningful distinction between the three, the thesis will therefore use these words interchangeably; see Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (Volume 1, Chapter 1: The Mandate of the TRC) (Graphic Packaging Ltd. GCGL, Freetown 2004) para. 5 [Hereinafter Chapter 1, TRC Report].

[792] See 3.3.1.

[793] Ibid, n 358.

[794] By virtue of article XXV of the **1999 Lomé Peace Agreement**.

[795] However, it was, in fact, only 'established' on 5 July 2002, when the seven Commissioners appointed by the President were formally sworn in during a public ceremony.

[796] **1999 Lomé Peace Agreement**, art. VI (2).

[797] Ibid.

creating an: *'…impartial historical record, preventing the repetition of the violations or abuses suffered, addressing impunity, responding to the needs of victims and promoting healing and reconciliation.'* The statutory definition of the 'object' in section 6 of the Act is more extensive.[798] Like other post-conflict societies, a Truth and Reconciliation Commission was preferred to a criminal justice institution as a tool for achieving the above object.

While defending the granting of amnesty to 'all combatants and collaborators' under the **Lomé Peace Agreement**, Solomon Berewa, the then Vice President of Sierra Leone, described the **SL TRC** as a 'balm' to heal the deep wounds of the Sierra Leonean society caused by the conflict.[799] Noting the brutal nature of the war, and the resultant grievous physical and emotional damage, and the divisions between families, and among neighbours and friends, the President of the **SL TRC** reiterated the healing role of the **SL TRC**.[800] He correctly observed that *'…the guns may be silent, but the trauma of the war lingers on. We have a great deal of healing to do.'* He therefore viewed the work of the **TRC** as a therapeutic process, an instrument of national reconciliation, and another means of strengthening the peace.[801]

The object of the Commission was therefore in line with the need to bring healing and lasting peace to the war-weary people of Sierra Leone. I will argue that rather than heal the deep wounds of the victims of sexual violence, however, the Commission reopened their wounds, by inadvertently condoning patriarchal practices, through its actions and inactions. I consider the Commission's actions to be inadvertent because of its failed attempts to address the issue of sexual abuse of women.[802] This was due to the conflict between the patriarchal based traditional rules introduced into its proceedings and victims' rights. This situation aggravated existing injustices, such as entrenched patriarchal power structures, and created new ones. An analysis of some of the elements of the object will show how well the Commission fulfilled its mandate in relation to the victims of sexual violence.

[798] See section 5.3 of this chapter.
[799] Solomon Berewa, 'Addressing Impunity using Divergent Approaches: The Truth and Reconciliation Commission and the Special Court' Truth and Reconciliation in *Sierra Leone a Compilation of Articles on the Sierra Leone Truth and Reconciliation Commission* (UNAMSIL, Freetown 2001) 55, cited in Chapter 1, TRC Report, n 791, 29.
[800] At the swearing in ceremony of the Commissioners in Freetown on 5 July 2002; see Chapter 1, TRC Report, n 791, para. 12.
[801] Ibid.
[802] This the Commission did by incorporating the issue of sexual violence into their operational structure, even though it was not specifically mentioned in the **TRC Act**.

5.3. Object of the Sierra Leone Truth and Reconciliation Commission

In terms of main objectives, the **SL TRC**'s mandate was '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'[803] It was also mandated to investigate the antecedents and the context of violations and 'whether those violations and abuses were the result of deliberate planning, policy or authorization by any government, group or individual, and the role of both internal and external factors in the conflict.'[804]

In addition, the **SL TRC** was authorized to restore the dignity of victims and promote reconciliation by providing opportunities for victims to speak out and also foster '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.'[805] Despite this broad mandate the **SL TRC** was forced to operate under immense time pressure and with very limited resources, as discussed earlier.[806] Undoubtedly, these limitations impacted the effectiveness of the SL TRC.

5.4. Validity of Local Traditions and Institutions incorporated by SL TRC

The definition of customary law shows the degree of validity of the local traditions and institutions adopted by the **SL TRC**. The Black's Law Dictionary defines customary law as:

> *customs that are accepted as legal requirements or obligatory rules of conduct, practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they are laws.*[807]

According to this definition, to be accepted as customary law, a custom, conduct, practices and beliefs must be a vital and intrinsic part of a social and economic system. Practices, such as those adopted by the **SL TRC**, no matter how popular, should pass the test to qualify as customs of the people of Sierra Leone.

Specifically, customary law as is applied in Sierra Leone is defined as: 'Any rule, other than a rule of general law, having force of law in any chiefdom of the Provinces…'[808] Joko Smart maintains that the phrase *having force of law in any chiefdom of the Provinces* may be subject to two interpretations.[809] First, the law must

[803] **TRC Act**, s. 6(1).
[804] Ibid, s. 6(2)(a).
[805] Ibid, s. 6(2)(b).
[806] See n 787.
[807] 'Customary law', *Black's Law Dictionary* (7th edn, West Pub. Co. 1999)
[808] **1963 Local Courts Act**, s. 2; now **2011 Local Courts Act**, s. 1.
[809] Joko Smart, n 115, 18.

be one that is 'recognised by and identified with a particular area in the Provinces' or just like the Black's Law Dictionary definition '…must be a vital and intrinsic part of a social and economic system.' Secondly, the law may be that other than general law which the Court recognises as binding in the case before it. Based on Joko Smart's interpretation, for customary law to be valid, it must either be recognized and identified with an ethnic group or area or be a custom so notorious that the Court would have taken judicial notice of it. Only the first interpretation is relevant to the discussion in this chapter since the **SL TRC** is strictly speaking, not bound to follow the precedents laid down by a court of law.

Given Black's Law Dictionary definition and Smart's first interpretation of Sierra Leonean customary law, it appears that what the **SL TRC** adopted as customary practice is contestable. Shaw and Kesall point out the conflict between the reintegration and healing processes adopted by the **SL TRC** and the established processes practised at village and familial levels.[810]

The **SL TRC** adopted non-standard customary practices, for example, cathartic truth telling, a key goal of the **SL TRC**, has no historical roots in Sierra Leone. The radio and television jingle **'Come blow your main, come clear your chest...'** Shaw argues, is clearly in opposition to social forgetting in Northern Sierra Leone.[811] Northern Sierra Leone is a region rooted in the widely held belief that speaking about the war in public encourages violence.[812] In addition, the adopted *'cool my heart /kol mi hat/'* phrase denoting forgiveness is also not a standard customary practice. Such a practice is neither recognized nor identified with any area in the provinces as customary law. In the next section, an analysis of customary law and the human rights standard which it is subjected to in courts will help clarify how the adoption of customary practices by the **SL TRC** contributed to exacerbating existing injustices and creating new ones.

5.5. Historical Background of Customary Law

Customary law was the sole law that regulated the lives of the people of Sierra Leone before its colonization by the British in 1787.[813] With the introduction of English law, customary law was relegated to a secondary position, and subject to

[810] Rosalind Shaw, *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone: Special Report*, (USIP 2005) 8; Tim Kelsall, 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone' (2005) 27 Hum.Rts.Q. 361, 363.
[811] Ibid.
[812] Ibid.
[813] Sierra Leone was colonized by freed slaves arriving from England; other groups followed from Nova Scotia (1792) and Jamaica (1800). They were sponsored and governed by the private Sierra Leone Company until 1808, when Britain made Sierra Leone a crown colony, see Martin Kilson, 'Modern Colonialism and British Rule in Sierra Leone, 1896 1937' in *Political Change in a West African State: A Study of the Modernization Process in Sierra Leone* (Harvard UP 1966) 11.

a repugnancy test prior to its application.[814] In Sierra Leone, as in other British colonies, Africans were allowed to practise their customary laws if they were not considered to be *'repugnant*[815] *to natural justice, equity and morality'*.[816] It meant that those parts of customary law which were determined to conflict with the Western principles of justice, equity or fairness were unenforceable. The colonial administrators, and later male chiefs**,** determined what part of customary law was repugnant.[817]

Customary law was therefore relegated to a subordinate position, while imported foreign law occupied a dominant position and thrived.[818] The phrase 'repugnant to natural justice, equity and morality' or its equivalent has been defined by various courts. This phrase was defined by the Chief Justice of Southern Rhodesia thus: *'The words "repugnant to natural justice and morality" should only apply to such customs as inherently impress us with some abhorrence or are obviously immoral in their incidence.'*[819] The phrasing of the repugnancy clauses however varies from country to country.

Section 10, **1933 Native Courts Ordinance** of Nigeria contains the repugnancy clause as *'repugnant to natural justice or morality.'* In the Colony of Natal, customary law was unenforceable, if it was *'repugnant to the general principles of humanity recognized throughout the whole world.'*[820] The phrase *'repugnant to the general principles of humanity*' appears in the 1975 Papua New Guinea's Constitution with respect to recognition of customs.[821]

Irrespective of the phrasing, however, the meaning remains the same, as it applies to such African customs as inherently impress the British with some abhorrence or are obviously immoral in their incidence. This abhorrence is not universal as these laws and customs have been accepted and had governed the lives of Africans before the arrival of the British colonial master. It therefore became the subject of many criticisms by many African scholars, briefly discussed below.

---

[814] **1933 Native Courts Ordinance of Sierra Leone,** s. 5.
[815] The dictionary meaning of the word 'repugnant' refers to behaviors or beliefs that are very unpleasant, causing a feeling of disgust; see 'repugnant' (Cambridge Academic Content Dictionary, CUP June 2013) <https://dictionary.cambridge.org/us/dictionary/english/repugnant >accessed 12 November 2016.
[816] See n 814.
[817] **1933 Protectorate Ordinance**, s. 28 & **1933 Native Courts Ordinance,** s. 4**.**
[818] Kwame Opoku, *The Law of Marriage in Ghana. A Study of Legal Pluralism* (A. Metzner 1976) 3.
[819] *Chiduku* v *Chidano* (1922) SR 55, 58; Fareda Banda, 'Women, Law and Human Rights in Southern Africa' (2006) 32 Journal of Southern African Studies 13.
[820] Ordinance No. 3 1849; Royal Instructions, March 8, 1948.
[821] **1975 Constitution of the Independent State of Papua New Guinea**, sch. 2, s. 18.

5.5.1. Criticisms of the Repugnancy Doctrine

Application of the repugnancy test has been widely criticized as having very little to do with the well-being of the local people.[822] The fact that the law of a people can be determined to be abhorrent and immoral by those who regard themselves as superior beings angered many African scholars. Notwithstanding the fact that the repugnancy rule protected women's rights, some Africans regarded it as unacceptable, frowning at the idea of subjecting the validity of African law to foreign English law and morals standards.

Consequently, the repugnancy doctrine was strongly criticised[823] and referred to as 'a colonial imposition, a Victorian world view,'[824] and '…its application has been as retrogressive as it has been progressive.'[825] Adopting a slightly different view, Kolajo argues that a custom is not illegal just because a court rules that it is repugnant. It is only inapplicable in that case since legality of customary law, according to him flows from the consent of those who follow the custom, giving it the force of law.[826] Similarly, in the 2004 Nigerian case of *Mojekwu* v *Iwuchukwu*, the Supreme Court held that a custom cannot be said to be repugnant to natural justice, equity and good conscience just because it is inconsistent with an English Law, or some principle of individual right as understood in any other legal system.[827]

These criticisms are based on the fact that 'European attitudes towards African law have been characterized by an attitude of superiority and based on false beliefs.'[828] Repudiating such attitudes, Bederman insists that African law 'is no mere souvenir of bygone law; it is an integral and coherent part of any healthy functioning contemporary legal system.'[829] In a similar vein, Ibidapo-Obe, insists that law is not an exclusive preserve of certain cultures, geographical areas, or,

---

[822] Ben Kiromba Twinomugisha, 'African Customary and Women's Human Rights in Uganda' in Jeanmarie Fenrich, et. al. (eds.), in the Future of African Customary Law (CUP 2011) 446, 449.

[823] For further criticisms see Melissa Demian, 'On the Repugnance of Customary Law' (2014) 56(2) CSSH 508; South African Law Commission, *The Harmonisation of the Common Law and the Indigenous Law: Report on Conflicts of Law. Project 90* (1999) http://www.justice.gov. za/salrc/reports/r_prj90_conflict_1999sep.pdf accessed 11 January 2016.

[824] Banda, n 819, 13, 14.

[825] Raymond Atuguba, 'Customary Law Revivalism: Seven Phases in the Evolution of Customary Law in Sub-Saharan Africa' McGill J. of Int'l L. & Legal Pluralism McGill Journal of International Law & Legal Pluralism <Customary Law Revivalism: Seven Phases in the Evolution of Customary Law in Sub-Saharan Africa - Inter Gentes> accessed 20 May 2022.

[826] A.A. Kolajo, *Customary Law in Nigeria through the Cases* (Spectrum Bks 2000) 1, 13-14.

[827] (2004) 11 NWLR (Pt 883) 196; for criticisms of the decision see I. M. Eme Worugji and R. O. Egbe, 'Judicial Protection of Women's Rights in Nigeria: The Regrettable Decision in Mojekwu v Iwuchukwu' (2013) 16 U Botswana LJ 59

[828] See T. W. Bennett, 'African Land- A History of Dispossession' in Reinhard Zimmermann and Daniel Visser (eds), *Southern Cross: Civil Law and Common Law in South* Africa (Oxford 1996; online edn, Oxford Academic 2012) 72 < https://doi.org/10.1093/acprof:oso/9780198260875.003.0003> accessed 1 Feb. 2023.

[829] David J. Bederman, *Custom as a Source of Law* (CUP 2010) 57.

civilizations.[830] Tobin also argues that the fact that customary law does not have the features of positive law *'does not make it any the less a system of law if, that is, law is considered as a mechanism for securing social harmony and the regulation of relationships within any given society'*.[831]

The thesis adopts the premise that customary law, natural law and positive law are interdependent, and all are vital for stable legal governance. None should therefore claim superiority over the others. However, to be enforceable, all laws, including customary law, as noted earlier**,** must comply with a set of criteria or requirements. These laws must not be discriminatory, especially against the vulnerable members of society.

5.5.2. Interpretation of the 'Living Law'

The interpretation of customary laws by male elders remains deeply rooted in patriarchy and ageism. Woodman rightly contends that the notion that customary laws are accepted within their communities, contradicts the non-democratic ways in which they are made.[832] In customary law making, not everybody's interests carry the same weight, as the interests of male elders, who make the laws, supersede **those** of females and youths.[833] Woodman's argument is similar to Holleman's view that customary law tends to be expressed communally and its association with the supernatural is gendered.[834] In practice, communal decisions and spiritual affairs rarely involve women.[835] For example, in Sierra Leone and many African societies, women usually cannot approach their ancestors directly, or occupy a hereditary lineage position or any public office.[836]

Given the fact that African women were largely left out of norm making processes, some feminists concluded that customary law is very much like international law: gendered and excludes the female voice. The general view among feminists therefore is that customary law is universally contrary to gender

---

[830] See Akin Ibidapo-Obe, 'The Dilemma of African Criminal Law: Tradition versus Modernity' (1992) 19 S.U.L. Rev 327.

[831] Brendan Michael Tobin, Why Customary Law Matters: The Role of Customary Law in the Protection of Indigenous Peoples' Human Rights' (PhD Thesis NUI Galway 2012) 13.

[832] See Gordon R. Woodman, A Survey of Customary Law in Africa in Search of Lessons for the Future in Jeanmarie Fenrich et. al. (eds.), *The Future of African Customary Law* (CUP 2011) 9, 12.

[833] Ibid.

[834] J. F. Holleman, 'An Anthropological Approach to Bantu Law (With Special Reference to Shona Law)' (1950) 10 Rhodes-Livingstone Journal 51, 54, 56, 63.

[835] Itohan Mercy Idumwonyi and Osamamen Oba Eduviere, 'Women and African Traditional Religion' in Olajumoke Yacob-Haliso and Toyin Falola (eds.) *The Palgrave Handbook of African Women's Studies* (Palgrave Macmillan 2021) 2169.

[836] Hackett found that for the Temne of Sierra Leone, 'a distinction between male and female is reflected in the contrast between private/public and individual/social divination;' see Rosalind I. J Hackett, 'Women in African Religions' in Arvind Sharma (ed.) *Religion and Women* (State University of New York 1994) 63, 77; see also ECOSOC, ECA, *Women in the Traditional African Societies* (Urban Problems: the Role of Women in Urban Development Workshop, Addis Ababa, September 1963) 2, 4.

equality.[837] Clearly, customary laws tend to perpetuate entrenched patriarchal rules that promote inequality and offer weak redress to women seeking justice. By considering the human rights implications of customary laws, superior courts have stated what the law ought to be. The repugnancy test has been crucial to doing so.

Put succinctly, customary law is what the male elites say it is.[838] The fact that males determine the dominant culture and give a definitive interpretation of customary law has always had grievous implications for women's rights, as the male-centered values of such laws are hardly ever women-friendly. As An-Na'im observed, because cultural norms are susceptible to different interpretations, *'...powerful individuals and groups tend to monopolize the interpretation of cultural norms and manipulate them to their own advantage.'*[839]

One reason given for the 'masculinist' constructions of customary law by interpreters or experts who were relied upon by the Colonial Courts was the fear **f** men losing control of women.[840] At the 1981 Bellagio conference, Kludze noted that 'Changes in the Customary law are inevitable…' because Africa was then passing through a period of cataclysmic changes, and '…to survive every system of law must be adaptable to change.'[841] According to Elias, *'[W]ith but few important exceptions [the chiefs] are the least competent to make an effectual synthesis of the old and the new rules of conduct in a fast changing social and economic side.'*[842] Citing Allott, Banda notes the comprehensive documentation of resistance to challenges to male privilege in the Southern African region which suggests 'a long and difficult road

[837] See Charlesworth *et. al*., n 6, 613, 633; Hilary Charlesworth, Human Rights as Men's Rights' in Julie Peters and P. Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge 1995) 103; Charlesworth and Chinkin, n. 5; Mackinnon, n 64, Chapter 13.

[838] Quoted in Abdullahi Ahmed An-Na'im, 'Towards a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment of Punishment' in Abdullahi Ahmed An-Na'im (ed), *Human Rights in Cross-Cultural Perspectives: a Quest for Consensus* (Univ of Pennsylvania,1995) 19, 28 (quoted in Clifford Geertz, *Interpretation of Culture* (Basic Bks 1973) 89 (as cited in Johanna E. Bond, 'Women's Rights, Customary Law, and the Promise of the Protocol on the Rights of Women in Africa' in Jeanmarie Fenrich et. al. (eds.), *The Future of African Customary Law* (Cambridge UP 2011) 467, 472.

[839] Ibid.

[840] Kenneth L Little, 'The Changing Position of Women in the Sierra Leone Protectorate' (1948) 18(1) Africa 1, 12; Martin Chanock, Law, *Custom and Social Order: the Colonial Experience in Malawi and Zambia* (Cambridge UP 1985) 210; Benedict Carton, '"My Husband is No Husband to Me": Divorce, Marriage and Gender Struggles in African Communities of Colonial Natal, 1869–1910.' (2020) 46(6) Journal of Southern African Studies 1111.

[841] AKP Kludze, 'Evolution of the Different Regimes of Customary Law in Ghana Within the Framework of the Principle of stare decisis' in Anthony Allott and Gordon R. Woodman (eds), *People's Law and State Law. The Bellagio Papers* (Foris Pub. 1985) 97, 102-103.

[842] T.O. Elias, 'The Problem of Reducing Customary Laws to Writing' in Alison Dundes Renteln & Alan Dundes (eds.), *Folklaw: Essays in the Theory and Practice of Lex Non Scripta* (Garland Pub. 1994) 319, 324-325.

to travel.'[843] So, even with the evolution of new cultural practices, the 'privileged' male leadership of customary law are unlikely to change with the times. Almost two decades later, the reluctance to give in to changes that favour women's rights was observed in the Zimbabwean case on the inheritance rights of women.[844] The Court noted that changing the law was likely to face resistance from the populace and that:

> *Great care must be taken when African customary law is under consideration. In the first instance, it must be recognised that customary law has long directed the way African people conducted their lives . . . In the circumstances it will not readily be abandoned, especially by those such as senior males who stand to lose their positions of privilege.*[845]

The ruling supports Banda's argument that both African and European males view women as being entitled to fewer rights.[846] The privileged position men hold is at the expense of women's rights. This 'offensive and unvarnished truth'[847] shows that *'...too many men and some women in positions of influence or who enjoy the patronage of powerful or influential men will be resistant to change and cling to an ossified version of customary law that privileges them*.'[848]

5.6. Feminists' View of Customary Law

Feminists and other human rights activists hold different views about African culture and customary law; two of which are diametrically opposed to each other, while the third can be said to be in between. The first are early narratives which featured women in the global south as victims, rather than agents of their culture and local customs and practices. They therefore viewed customary law as comprising rigid, inflexible and oppressive norms, contrary to human rights norms.[849] For example, **CEDAW** focuses, in the few articles that address it, almost exclusively on the negative aspects of culture, regarding such as

---

[843] Banda, n 819, 19; Anthony Allott, The Limits of Law (Butterworth 1980); see also Southern African Research and Documentation Centre [Hereinafter SARDC], *Beyond Inequalities: Women in Zambia* (SARDC, 1998); SARDC, *Beyond Inequalities: Women in Mozambique* (SARDC 2000); SARDC, *Beyond Inequalities: Women in Angola* (SARDC 2000); SARDC, *Beyond Inequalities: Women in Southern Africa* (SARDC 2000).
[844] *Magaya* v *Magaya* (1999) 1ZLR 100.
[845] Ibid, 113.
[846] Banda, n 819, 13, 19.
[847] Ibid.
[848] Ibid.
[849] Quoted in E. Mayambala, 'Changing the Terms of the Debate: Polygamy and the Rights of Women in Kenya and Uganda (1996) 3 E. Afr. J. Peace & Hum. Rts. 200 (as cited in Twinomugisha, n 822, 446, 452; Radhika Coomaraswamy, 'Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women (2002) 34 Geo. Wash. Int'l L. Rev 483, 484; Tracy E. Higgins, 'Anti-Essentialism, Relativism and Human Rights' (1996) 19 Harv Women's L. J. 89, 91; Ratna Kapur, 'The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International Post-Colonial Feminist Politics' (2002) 15 Harv Hum. Rts. J. 1, 6.

‘uniformly regressive and bad for women.’[850] The **Committee on the Elimination of Discrimination against Women** was concerned:

> *…about the strong persistence of patriarchal attitudes and deeply rooted stereotypes regarding the role and responsibilities of women and men in society, which are discriminatory towards women. …that the preservation of negative cultural practices and traditional attitudes serves to perpetuate women’s subordination in the family and society and constitute serious obstacles to women’s enjoyment of their human rights.*[851]

Furthermore, the **Committee on the Elimination of Discrimination against Women** emphasizes the close linkage between traditional attitudes that subordinate women to men, and violent or coercive practices such as forced marriage, family violence and abuse.[852] This assertion is supported by Oosterveld’s observation that pre-war Sierra Leonean wives were ‘largely seen as subordinate to men, and the title of ‘wife’ in wartime was an exaggerated (and somewhat perverted) extension of the duties of wives in peacetime.’[853] It is therefore not unexpected that such discriminatory practices were widespread during conflict-related forced marriages. The strongly entrenched stereotyped roles of wives were simply replicated during conflicts.

5.7. Legal Context of Customary Law in Sierra Leone

As discussed earlier, Sierra Leone operates a pluralistic legal system.[854] Customary law applicable in Sierra Leone is subject to constitutional and statutory law or general law[855] by virtue of section 1 of the **2011 Local Courts Act** which states that ‘customary law’ means:

> *Any rule, other than a rule of general law, having the force of law in any Chiefdom of the Provinces whereby rights and correlative duties are acquired or imposed in conformity with natural justice and equity,*[856] *and not incompatible, either directly or indirectly, with any enactments*

---

[850] Bond, n 838, 475; see **CEDAW**, art. 5.

[851] UN CEDAW, ‘Concluding Comments of the Committee on the Elimination of Discrimination against Women: Democratic Republic of the Congo’ (25 August 2006) UN Doc CEDAW/C/COD/CO/5, para. 27.

[852] UN CEDAW, n 607, para. 11.

[853] Oosterveld, n 194, 133.

[854] See n 304.

[855] Ibid, s. 76(1) states that Customary Law shall not prevail if it conflicts with Natural Law, Equity and good conscience. This is simply because in interpreting any rule of custom, it is important to do justice to the parties in dispute. Section 76(3) provides further that the court would be guided by those principles where no expressed position of the rule is applicable. The court should look at what justice, equity and good conscience would demand. Equity does not take precedence over a statute. The alternative is for the statute to be amended or repealed if found to conflict with justice.

[856] This refers to the English doctrines of equity as they have over time evolved in England and Sierra Leone. Equity generally is referred to as natural justice because they are synonymous. But in Sierra Leone as in England, equity goes beyond natural justice because it affects the interpretation of the law by the courts. Equity is necessary because of the need to give justice to individuals who may be in dispute.

applying to the provinces, and includes any amendments of customary law made in accordance with the provisions of any enactment[857]

Obviously, a human rights standard has replaced the repugnancy provision in the repealed **1933 Native Courts Ordinance**. Although, the application of the repugnancy advanced women's rights,[858] one of the results of its criticisms is its replacement by a human rights standard. In the post-independent amendment, the word 'repugnant' was replaced with more acceptable words or phrases in several former British colonies. Although, the new words or phrases were constructed differently, in principle, customary law must still conform to an acceptable standard, a human rights standard. Unfortunately, these amendments have done little to promote women's rights, especially in rural areas. This is mainly because despite the domestic and international laws prohibiting discriminatory customary practices, customary law is often the sole legal system regulating the lives of rural women.

Section one of the **2011 Local Courts Act** means that the customary laws and practices of the people of Sierra Leone must conform to natural justice and equity, as well as being compatible with general law applicable in the provinces. The subordination of customary law to general law is however, not reflected in the daily lives of majority of persons who live in the rural areas of Sierra Leone. Civil and criminal matters, such as family relations, property rights, and succession continue to be governed by customary laws. Thus, there is tolerance of customary practices that on the face of it run counter to general law.

The major reason customary law is the only functional legal system in many villages, is because the State's influence is usually lacking or at best, very limited.[859] As Fenrich *et. al.* correctly observed, *'Even where available, the formal legal system, with its linguistic obstacles, intricate rules, formalities, and expense, is often out of the reach of the poor or uneducated.'*[860] So, customary law is the law of choice and more prevalent in rural than in urban areas of Sierra Leone. For majority of women living in the rural areas of Sierra Leone therefore, customary legal

---

[857] **2011 Local Courts Act**, s. 1 (same as the repealed s. 2 of the **1963 Local Courts Act**).

[858] For example, in *Wie alias Peter* v *Kokoh* (1937-49) ALR S.L. 100, the Supreme Court of Sierra Leone upheld the right of a wife who deserts her husband not to be detained as a human pledge until the dowry is repaid, as the *Kroo* custom was. The court held that such a custom was repugnant to the principles of English law and good morals.' Similarly, superior courts have awarded custody of children to women who left their husbands, contrary to a general customary rule. The rule is that any child born to a man's wife is the legitimate child of her husband, irrespective of whether he is the biological father or not. Even if the parties were separated, a situation that made it impossible for the husband to be the father of the child, custom still considers such a child to be his and denies the biological father of the right to his child; see the Nigerian case of *Mariyamo* v. *Sadiku Ejo* (1961) N.R.N.L.R 81 in which the Court held that the law that denies the biological father of the right to his child was invalid.

[859] See Jeanmarie Fenrich *et. al.*, 'Introduction' in Jeanmarie Fenrich *et. al.* (eds.), *The Future of African Customary Law* (Cambridge UP 2011) 1.

[860] Ibid.

regimes are the predominant, if not the only, system of justice to which they had access to during the war and the post-conflict period. Consequently, almost every vital aspect of the lives of Bush wives was governed by customary law.

5.8. Who Determines What Constitutes Customary Law?

Given that customary law is, by definition, intrinsic to the life and custom of indigenous peoples and local communities, what is the status of 'custom' and what amounts to 'customary law' is determined by the people. The 'people' here excludes females but includes male elites who have almost always usurped customary law norm making processes.[861] It will therefore depend very much on the male perception of these questions, and on how they function as the dominant group in their local communities. This type of gender stereotyping portrays the male role in the public sphere as 'guaranteeing community welfare,'[862] while females are relegated to the private sphere of the home.

It is widely accepted that customary law is not static, but an evolving, 'living law.'[863] so obviously it may be modified by its practitioners. There is however no evidence that these practices: social forgetting and forgiveness were developed by 'the people of Sierra Leone'. A fundamental question, which has long been the subject of academic discourse is, who is authorized to fix the rules by which custom is to be identified. In the 1931 Nigerian case of *Eleko* v *The Officer Administering the Government of Nigeria & Anor*, the Privy Council's asserted that:

> *[i]t is the assent of the native community that gives a custom its validity and, therefore, barbarous or mild, it must be shown to be recognised by the community whose conduct it is supposed to regulate.*[864]

The question of who constitutes the community remains a key issue in the determination of women's rights. Is it the male elders, the educated males, or all members of the community, including the women folk? Even if these practices originated from the people, it is unlikely that the females played any role in their development because it is a notorious fact that females do not participate in

[861] The usurpation of customary law norm making processes by males, and indeed law making in general, has for long been vehemently criticized by many feminists; see notes 931-935, see also Joanne Conaghan, 'Theorizing the Relationship Between Law and Gender' in *Law and Gender* (Clarendon Law Series) (Oxford UP 2013) 70.
[862] Florence Namulundah, 'Bukusu (Kenya) Folktales' (2013) 15(3) International Feminist Journal of Politics 378.
[863] In *Oyewunmi* v *Ogunsesan* [1990] 6 SCNJ 127, the Supreme Court of Nigeria defined customary law as: 'the organic or living law of the indigenous people'; Tobin refers to it as 'dynamic and constantly evolving', see B. Tobin and E. Taylor, 'Across the Great Divide: A Case Study of Complementarity and Conflict between Customary Law and TK Protection Legislation in Peru' (Initiative for the Prevention of Biopiracy Research Documents, Year IV, No. 11. Lima: Sociedad Peruana de Derecho Ambiental 2009) 7; cited in Katrina Cuskelly, *Customs and Constitutions: State Recognition of Customary Law Around the World* (IUCN 2012) 1.
[864] [1931] A.C. 662, 673

customary law making.[865] This unjust male-controlled norm is deeply entrenched in rural Sierra Leone and contributes to the marginalization of women in the society.

Moreover, these customs could not have been developed by the **SL TRC**, because official or government institutions can only make or interpret statute or positive law, but not customary law. Even if they did, such interpretation must be *'…according to the contemporaneous moral, ethical and equity based standards of the relevant society.'*[866] Furthermore, the basis of the **SL TRC**'s adoption of these practices was neither the domestic nor the international gender equality standards protected by Sierra Leone's legal system.[867] Their adoption was contrary to the express provisions of the **Maputo Protocol**, which specifically requires states to 'integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life.'[868] Similarly, article 2 (f) of **CEDAW** enjoins state parties: 'To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.'

The **SL TRC**'s adoption of these discriminatory practices are therefore not in accord with Sierra Leone's international obligations. Furthermore, as at the time of writing, it is uncertain if any customary court in Sierra Leone has taken judicial notice of these practices, as sources of the customary law of Sierra Leone are largely unwritten. The records of the Native and Local Court which has primary jurisdiction over customary law were until recently 'inadequate and poor'.[869] The compulsiveness of these practices contributed to the legitimization of discriminatory practices, and the denial of women's rights. Consequently, the definition and implementation of rules for the identification and enforcement of customary law is vital for securing the recognition and respect for women's rights, a dominant theme of my thesis. My argument is that such rules must conform to a human rights standard.

The **SL TRC** acknowledged the significant role customary law plays in people's lives by incorporating it into its proceedings. However, it ignored the potential conflicts that arise between the application of customary law and domestic and international human rights norms, and particularly the issue of gender inequality. Such conflicts, I argue, might have been mitigated by the application of a human rights standard. I shall analyse the traditional ceremonies in the next section, to

[865] Banda decries the exclusion of the female voice in customary norm making, see Banda, n 819, 13, 14.
[866] Tobin, n 831, 38.
[867] Neither social forgetting nor forgiveness as advocated by the **SL TRC** are provided for in any known domestic or international instrument.
[868] Article II (1) (c).
[869] Joko Smart, n 115, 5.

support my argument that such conflicts were exacerbated by the **SL TRC** processes.

5.9. Traditional Ceremonies and Women's Rights

The main argument of this thesis is that lack of respect for women's human rights in rural Sierra Leone is key to the harms women experienced before, during and after the war. The entrenched patriarchal power structures exacerbated existing injustices and created new ones for the Bush wives. An important factor that influenced the negative experiences of the Bush wives was that despite Sierra Leone's commitment to gender equality, the **SL TRC** accommodated and reinforced rather than challenge and change patriarchal norms and attitudes.

Application of customary law by the **SL TRC** without subjecting it to a human rights standard had grave implications for female victims of sexual violence, and particularly the victims of forced marriage. The absence of women and women's voices from the proceedings of the **SL TRC** due to patriarchal norms and attitude of disregarding women also deprived the Commission of the opportunity to unearth the whole truth about the experiences of the Bush wives. The obvious bias for, and the privileging of the male ex-fighters[870] is a typical patriarchal attitude which ends up exacerbating existing injustices of sexual violence and prolonging the traumatic experiences of Bush wives.

Local justice and reconciliation practices often employ community beliefs, norms, and traditions. The **TRC** in Sierra Leone is not unique as **TRC**s in countries such as Uganda, Mozambique, Rwanda and Burundi utilized these local practices (often referred to as 'traditional justice') to address massive human rights violations.[871] Many scholars have queried the use of these local practices and expressed concerns about due process, gender and other discrimination, and community power dynamics. Nevertheless, they have been regarded as more acceptable because they often appear to be more legitimate and easily accessible compared to the more formal, state institutions.[872]

The fact is that they may also be more suitable in contexts of horizontal violence, that is violence committed by and among people and groups rather than by the state.[873] However, these advantages hardly outweigh their customary law foundations which are often detrimental to the realization of women's rights.

[870] As discussed in section **3.12.2 above.**

[871] Tim Allen and Anna Macdonald, 'Post-Conflict Traditional Justice: a Critical Overview' (2013).

[872] Lisa Denney and Pilar Domingo, 'Local Transitional Justice: How Changes in Conflict, Political Settlements, and Institutional Development are Reshaping the Field,' in Roger Duthie et. al, *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (ICTJ 2017) 221-225.; Lars Waldorf, 'Just Peace? Integrating DDR and Transitional Justice' Context' in Chandra Sriram et al.(eds.), *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants* (Taylor & Francis 2012) 62, 81.

[873] This is because they tend to focus on social relationships and trust, see Denney and Domingo, ibid.

Since no reasonable person would accept a custom that places her in an invidious position, the survivors of forced marriage cannot be said to have accepted the customs applied by the **SL TRC**. Undoubtedly, the non-acceptability of a custom by individuals does not invalidate it, but customs that are unacceptable to women, who form majority of the population in a community, cannot be said to be binding, especially if unjust.

While acknowledging the utility of tradition-based restorative initiatives, Stovel warns against their blind adoption. She stresses that *'Traditional governing institutions and processes are tremendous resources for achieving peaceful co-existence in the aftermath of war, but they should not be taken for granted, romanticized or blindly reinforced.'*[874] McAuliffe has similarly criticized the romanticization of local, traditional and/or customary practices as a means of facilitating transition.[875] Gready and Robins also view such practices as locally developed ideas, relevant to particular groups at particular times, and no longer in their initial format, but dominated by the international community and widely disseminated and celebrated, in theory, as locally grown ideas.[876] In the Sierra Leonean context, Berghs supports Stovel's contention regarding the external manipulation of 'bad bush ...' 'into a recognised and hierarchical form of customary justice…'[877]

These practices or customs are often presented as enduring, historically relevant and, most importantly, peaceful, harmonious, and restorative. Proponents ignore the fact that 'traditional law' has changed over time, influenced by colonialism, and has established new and changing methods of social control and manipulation.[878] In Sierra Leone, traditional law thrives in rural areas, and was not only a major contributing factor to the war,[879] but remains a highly contentious and problematic issue.[880] Admittedly, customary law can provide stability and familiarity, but it can also help 'reconstitute pre-conflict structures of exploitation.'[881] Some of the local traditions implemented by the **SL TRC**, for example, perpetuated patriarchal practices and may have been acceptable to the

[874] Laura Stovel, '"There's no Bad Bush to Throw Away a Bad Child": "Tradition"– Inspired Reintegration in Post-War Sierra Leone' (2008) 46(2) J. of Modern African Studies 305, 321.
[875] Padraig McAuliffe, 'Romanticization Versus Integration?: Indigenous Justice in Rule of Law Reconstruction and Transitional Justice Discourse' (2013) 5(1) Goettingen J. Int'l L 41, 44, 48, 65, 66, 68ff, 85; see also Declan Roche, Accountability in Restorative Justice (Oxford UP 2003) 13.
[876] Paul Gready and Simons Robins, 'From Transitional to Transformative Justice: a New Agenda For Practice' (2014) 8 I.J.T.J. 339, 342-343.
[877] Maria Berghs, *War and Embodied Memory: Becoming Disabled in Sierra Leone* (Ashgate Pub. 2012) 90.
[878] Anthony N Allott, 'The Changing Law in a Changing Africa.' Sociologus (1961) 115.
[879] As 'a drama of social exclusion' based on patrimonialism traceable to local traditions, see Paul Richards, *Fighting for the Rainforest: War, Youth and Resources in Sierra Leone* (James Currey 1996) xviii, xxviii, xxv, 34-35, 161, 164.
[880] Franssen, n 268, 195.
[881] Rosalind Shaw and Lars Waldorf, 'Introduction: Localizing Transitional Justice' in Rosalind Shaw et. al. (eds) *Localizing Transitional Justice: Interventions and Priorities After Mass Violence* (Stanford UP 2010) 3, 16.

male dominated communities, but they failed to promote women's rights; the goal of **CEDAW** and the **Maputo Protocol**.

Acceptance of these practices is not simply a 'consequence of history', but a reflection of the inability or unwillingness of a modern society to submit perpetrators of heinous crimes to account, 'either through public condemnation or effective juridical process'.[882] For example, each of the **SL TRC** district hearings ended with a ritualized apology and reconciliation ceremony.[883] At these ceremonies, perpetrators or ex-combatants were given an opportunity to apologize and ask for forgiveness from the community for their wrong doings. The communities were represented not by the direct victims but by town or village elders and/or religious leaders.[884]

Emphasis was on the reconciliation of male ex-combatants, who were perceived as more useful to society than women, thus resulting in the marginalisation of women. The ritualized apology and reconciliation ceremonies and having the elders and/or religious leaders as representatives of communities, are reflections of discriminatory customary norms and traditions, based on entrenched patriarchal attitudes. This is another evidence of the lack of respect for women's human rights in rural Sierra Leone; key to the harms women experienced before, during and after the war. At these ceremonies, religious elements were amplified and the local elders in attendance were in full ceremonial garb.[885] The presence of local leaders in ceremonial dress is believed to have affected the ex-combatants to a far greater degree than the completely alien notion of cathartic sharing.[886]

Some scholars commended these reconciliation ceremonies for being more relevant to local practices of forgiveness and reconciliation. They were considered as acceptable and thus more useful in re-establishing community ties. Kaindaneh,[887] and Kelsall and Hoffman, for example, consider the traditional memorials and rituals as helpful reconciliation strategies in post-conflict communities in rural Sierra Leone. Kelsall views the ritual ceremonies of

---

[882] Luci Kartar-Hyett, 'Simply Unwilling: Is Patriarchy Preventing the Prosecution of Crimes against Women in African States: a Kenyan and Ugandan Perspective' (2016) 24(2) AFJICL 175, 180.
[883] Kelsall, n 810, 361, 386.
[884] Ibid.
[885] Ibid.
[886] Particularly members of the CDF whose war time experiences would have been shaped predominantly by secret society initiations and rituals. Initiation into the CDF, and the Kamajors specifically, was steeped in traditional black magic practices. For example, the widespread practice of 'bulletproofing', which was a cult practice designed to keep soldiers safe from bullets, was upheld based on strict adherence to a set of restrictions. Members needed to be chaste, respectful etc. to maintain their bulletproofing, see Danny Hoffman, *The War Machines: Young Men and Violence in Sierra Leone and Liberia* (Duke UP 2011) 224-229; Denov, n 267, 69.
[887] See Steven Kaindaneh et. al., 'Remembering the Past and Reconciling for the Future: The Role of Indigenous Commemorative Practices in Sierra Leone.' in Marwan Darweish and Carol Rank, *Peacebuilding and Reconciliation: Contemporary Themes and Challenges* (Pluto Press 2012) 72, 77ff.

repentance, combined with acts of forgiveness as resonating deeply with local cultures and thus are more likely to have an impact, even without the truth being told.[888] These private ceremonies, he argues, were more readily accepted than public truth-telling. Taking a slightly different view, for Hoffman, the presence of traditional heads of local pseudo-religious groups at such ceremonies was the catalyst to a more sincere and truthful reaction from those testifying.[889]

Kaindaneh, Kelsall and Hoffman views of the traditional memorials and rituals as helpful reconciliation strategies did not consider the customary role of women in rural Sierra Leone. Women do not often participate in reconciliation ceremonies where men are interested parties. Women were thus further marginalized by SL TRC's adopting a tradition-based restorative initiative which according to Stovel 'say nothing about the terms of reconciliation-especially terms of justice and equality'. He argues further that these tradition-based processes '…may reinforce the very tensions and power structures that contributed to the war in the first place.'[890]

The absence of women voices in these ceremonies is a patriarchal attitude that denied women of their human rights to speak for themselves. This denial worsened the existing injustice of the patriarchal attitude depicted by the proverb: '**The woman is like a child. (She must be guided at all times**.)'[891] Women in Sierra Leone have always been subordinated under customary law, so the exclusion of women from the reconciliation ceremonies was a carry-over of pre-war practices to post-conflict transition. It also created the new injustice of robbing women of their human dignity, and more importantly, of marginalizing them in the state organized reconciliation programmes.

5.10. Truth: the First Victim of War[892]

The whole premise of truth commissions is the explicit verbal acknowledgement of wrongdoing with no expectation of forgiveness and no attempt at excuses. Regrettably, what occurred at the **SL TRC** hearings was largely the opposite of this. During the hearings, witnesses, and members of the audience with knowledge of specific activities of those testifying, were often frustrated by the quality and content of the brief statements made by ex-combatants. At times the district hearings were in danger of breaking down because of the reluctance of

[888] Kelsall, n 810, 386-388.
[889] Hoffman, n 886.
[890] Stovel, n 874, 305, 306.
[891] Anthonia A. Dickson and Mary Donald Mbosowo, 'African Proverbs about Women: Semantic Import and Impact in African Societies' (2014) 5(9) Mediterranean Journal of Social Sciences 632, 633.
[892] 'Redbubble' < https://www.redbubble.com/i/poster/African-Proverbs-Truth-is-the-first-victim-of-war-by-AfricanProverbs/123507918.LVTDI# > accessed 19 June 2012.

ex-combatants to admit to participation in crimes.[893] Ex-combatants blamed their superiors, God and even their victims, but never admitted any wrongdoing. This is contrary to liberal understandings of transition, whereby an apology involves a statement of individual responsibility and contrition based on truth.[894]

Evidently, neither truth-telling nor individual responsibility figured in these ex-combatant statements. They were probably motivated by the saying that '**A speaker of Truth Has No Friends**.'[895] It is doubtful if speaking the truth would have changed the people's perception about them, since the crimes they committed were common knowledge, and a notorious fact is that: **'The worst you can do to truth is to cloth it in lies, you can't undo it.'**[896] Not unexpected, the authenticity of the apologies of the ex-combatants was doubted, particularly by local spectators and Western observers.[897]

Though the presence and expectation of local leaders and community members may have had significant impact on the participants, the same cannot be said for the ex-combatants The act of 'squeezing' apologies from them;[898] apologies not founded on the whole truth, is in my view meaningless. How can one reconcile the fact that '... the testimonies of ex- combatants were empty of any truth or remorse...'[899] with the authenticity of their apologies? Obviously, the apologies were contrived.

Furthermore, the then President apologized to the women of Sierra Leone for the atrocities committed against them,[900] but apologies, no matter how genuine, cannot be a substitute for that of the perpetrators. The refusal of the perpetrators to recognize and acknowledge sexual violence against women in the context of transitional justice and the silence of the SL TRC to question their version obstructed the truth. Could this be because of the patriarchal view that '**All Truth is Good to Know But not all truth is good to say- Some things are better said than kept; others are better left unsaid'**[901]

[893] Gearoid Millar, 'Local Evaluations of Justice through Truth Telling in Sierra Leone: Postwar Needs and Transitional Justice' (2011) 12 HRR 515, 544.
[894] Shaw, n 486, 111, 129.
[895] Pinterest, < heartfeltquotes.blogspot.com > accessed 21 October 2022.
[896] 'African Proverbs on Truth (17 Proverbs)' < https://www.inspirationalstories.com/proverbs/t/african-on-truth/> accessed 19 June 2023.
[897] Kelsall, n 810, 361, 388.
[898] Ibid.
[899] Ibid.
[900] PeaceWomen, 'Sierra Leone: Apology to Women Victims a Welcome Step' (Sierra Express Media, 2010)
[901] African Proverbs Page <
https://www.facebook.com/africanproverbspage/photos/a.886048424801949/5550165385056873/?type=3>
accessed 12 November 2022.

Meanwhile, for the victims of forced marriage the consequences of these tradition-based local ceremonies were life changing. Beginning with the effect of the presence of male local leaders who in general actively endorse discriminatory laws and practices, followed by examining why the truth matters to women, my argument is that these concerns are among those Nesiah identified as failures of commissions – under-reported crimes and inaudible women voices.[902] These issues exacerbated the existing injustice of the patriarchal attitude that regards men as invaluable members of the society who can get away with committing heinous crimes.

5.10.1. Absence of Truth

Truth matters to women and knowing the truth is very important to victims as it brings about closure. Truth-seeking processes appeal to feminists mainly because of the capacity of such processes to unearth the truth. Several scholars agree on the ways truth-seeking processes can advance gender justice. O'Rourke, Ross, and Ní Aoláin and Turner agree that truth processes recognize and condemn harms experienced by women, expose the structural gender inequalities that make women vulnerable to specific harms. In addition, such processes affirm women's agency as well as establish truth as an important site of feminist engagement in transitional justice.[903] The informality and flexibility of truth commissions compared to criminal processes[904] means that while the former can accommodate any legal category of harms, the latter is restricted by its jurisdiction to only legally defined harms.

Similarly, the evidentiary standards and burdens of proof, and procedural due process are less strict for truth commissions.[905] These characteristics ensure that truth commissions can easily unearth the truth. However, this is not always so, as Nesiah identified under-reported crimes as one of truth commissions' failures.[906] Failure to fully report crimes committed against women is an infringement of the rights of victims and creates a culture of impunity for sexual violence.

5.10.2. Does Truth Matter to Women?

While part of the mandate of the TRC was to 'create an impartial historical record', it failed **to** do so in this regard because there the perpetrators had nothing to lose by not telling the truth. Having been granted absolute amnesty and

[902] Nesiah, n 1, 41.
[903] See Fiona Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (Pluto Press 2003) 20-26; Fionnuala Ní Aoláin and Catherine Turner, 'Gender, Truth and Transition' (2007) 16 UCLA Women's Law Journal 229; O'Rourke, n 296, 102.
[904] O'Rourke, n 296, 101.
[905] Anne Orford, Commissioning the Truth (2006) 15(3) Colum.J.Gender & L. 851, 859-860.
[906] Nesiah, n 1, 41.

immunity from prosecution,[907] it became irrelevant if they lied or told half-truths. This was unlike the situation in South Africa where full disclosure of details of the crimes committed was one condition for granting amnesty to perpetrators.[908] The **SL TRC** therefore seldom got the whole truth, particularly from ex-combatants.[909]

Ex-combatants frequently gave 'NGO narratives' which focused on their own abduction or recruitment into combatant groups.[910] They were particularly reticent to speak about specific crimes or actions that occurred during the conflict.[911] Former soldiers seldom admitted to being soldiers at all and were more likely to confess to being 'bodyguards', 'drivers', or 'the young boy who carries the talismans of protection'.[912] While linking 'truth' to forgiveness, as happened in South Africa, may have facilitated truth telling, the difficulty in discovering if a person is telling the whole truth still exists in such situations. As the oft-quoted proverb states: **'A lie can travel halfway around the world while the truth is still putting on its shoes.'[913]**

Failure of the **SL TRC** to create an impartial historical record was not for lack of trying. In an effort to elicit truthful testimony from ex-combatants, Commissioners sometimes adopted an adversarial and judicial approach, asking pointed questions and demanding specific facts, from combatants as well as witnesses.[914] Franssen contends that this non-restorative approach to extracting truth would have put its own filter on the narratives that emerged. It would have denied ex-combatants, witnesses and victims alike the opportunity to state their own understanding of what happened and why.[915]

On the other hand, it could be argued that, given the prevailing circumstances[916] the **SL TRC** had no option but to adopt such an approach. It is difficult to envisage a better approach, given the reluctance of many who testified to tell the truth. Although, the **SL TRC** proceedings did not encourage ex-combatants to tell the truth, it did encourage them to return home, and encouraged these

---

[907] See p. 68ff.
[908] Rosemary Nagy, 'Violence, Amnesty and Transitional Law: "Private" Acts and "Public" Truth in South Africa.' (2004) 1(1) African Journal of Legal Studies 1, 5, 14, 25.
[909] Kelsall, n 810, 361, 377.
[910] Shaw, n 486, 111, 132.
[911] Kelsall, n 810, 361, 377.
[912] Franssen, n 268, 187.
[913] Quote Investigator <https://quoteinvestigator.com/2014/07/13/truth/> accessed 12 May 2023.
[914] Franssen, n 268, 188.
[915] Ibid.
[916] As discussed above on p. 141, the paltry budget the Commission secured was inadequate and greatly affected its effectiveness, severely limiting its capacity to fulfil its mandate.

communities to accept them. However, for the women, the practice was quite different.

5.11. Effect of the Presence of Male Local Leaders

The presence of community elders and heads of religious communities at district hearings is believed to have also contributed to the miscarriage of justice.[917] Similar opportunity was not given to women, as it is a notorious fact that heads of such bodies are mostly men. This is contrary to article IX (2) of the **Maputo Protocol** which requires states parties to '… ensure increased and effective representation and participation of women at all levels of decision-making.' In addition, I argue that the exclusion of equivalent female representatives serves to reinforce the existing injustice of the patriarchal attitude that regards women as minors and excludes them from the public sphere. This attitude is exemplified by the Kimaragoli-Luhya proverb: **'The woman never thinks beyond the bed she sleeps on.'**[918] This means that she is limited in her knowledge and perception of the world beyond her home. Thus, she is excluded from the public sphere.

So, traditionally, public positions are held by older men, and those in central roles of the clientelist or patrimonialist networks. The possibility is that the presence of the male community leaders with their patriarchal mind-sets, could not have favoured the victims of sexual violence, even if the truth had been told. This is because the public acknowledgement of the harms they suffered might not have been adequate defence against the 'lies left untold' about their complicity. This is partly because, as discussed above, under customary law, rape cases are not regarded as serious offences as they are dealt with through mediation or the 'family way.'[919]

This occurs even though under customary law, settlement is not permitted in criminal cases, particularly those involving violence.[920] So, unlike crimes involving male victims, sexual exploitation and sexual abuse of females are condoned under customary law, and treated with levity, resulting in grievous consequences for the female child and women. The existing culture of impunity is reinforced due to the widespread social acceptance of these unjust practices. This shows lack of respect for women's human rights in rural Sierra Leone, which is key to the harms women experienced before, during and after the war.

---

[917] Kelsall, n 810, 361, 385.
[918] Dickson and Mbosowo, n 891, 634.
[919] Borrowing Mgbako and Baehr's phrase, see Mgbako and Baehr, n 457, 181; Michael P. Scharf and Suzanne Mattler, 'Forced Marriage: Exploring the Viability of the Special Court for Sierra Leone's New Crime Against Humanity and Customary Law in Sierra Leone and Liberia' Case Legal Studies Research Paper No. 05-35 (2005) African Perspectives on International Criminal Justice, 1, 2 < https://ssrn.com/abstract=824291> accessed 17 August 2015.
[920] See n 336.

The ensuing high incidences of sexual violence, 'not only rigidifies impunity for perpetrators but act to successively maintain misogynistic attitudes. Impunity is also aided by the low rate of reporting of such incidences, due to the families' and the public's aversion to reporting such cases. Furthermore, impunity thrives when parents accept compensation instead of reporting cases, coupled with the low rate of convictions for reported incidents of sexual violence.'[921]

For long, treaty bodies and similar organs have lamented the continuation of such negative attitudes and practices. For example, in 2016, the **UN Committee on the Rights of Children** expressed grave concern at sexual violence against the girl child [and women], despite the State party's adoption of the **2012 Sexual Offences Act** and the establishment of the **National Referral Protocol on Gender-based Violence**.[922] The lack of enforcement of such laws ultimately endorses these harmful traditions through impunity, leading to an increase in post-conflict incidences of rape.[923] Incidentally, despite the injustice of permitting rapists to marry their victims, some states favour such marriages and disregard the criminal trials of offenders.[924]

5.12. Criminal Trials vs. Customary Rights of Rapists

Avoiding criminal trials is based partly on the belief that a trial may be more traumatic for a survivor. In many patriarchal societies, the perception is that the outcome of a criminal trial may be worse than marrying the rapist, as victims may have to endure a traumatic hearing with uncertain results.[925] A more alarming drawback noted is the subsequent publicity and the negative consequences for the victims.[926] While such an argument may have some merit,[927] it ignores the fact

---

[921] See CRC/C/SLE/CO/3-5, 2016, n 50, paras. 18-21.

[922] The Committee reiterates its previous concerns, see CRC/C/SLE/CO/2, 2008, n 50, para. 72.

[923] See p. 89.

[924] Amnesty International, *This Exists: Law Allows Rapists to Escape Prison If They Marry Underage Victims* (AI) < https://www.amnestyusa.org/updates/this-exists-law-allows-rapists-to-escape-prison-if-they-marry-underage-victims/> accessed 12 January 2021.

[925] Vivian Berger, 'Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom.' (1977) 77 Colum. L. Rev. 1; Morrison Torrey, 'When Will We Be Believed - Rape Myths and the Idea of a Fair Trial in Rape Prosecutions' (1991) 24 U.C. Davis L. Rev. 1013.

[926] Tsun-Yin Luo, '"Marrying My Rapist?!" The Cultural Trauma Among Chinese Rape Survivors.' (2000) 14(4) Gender & Society 581; Azman Mohd Noor, 'A Victim's Claim of Being Raped is Neither a Confession to Zina nor Committing Qadhf (Making False Accusation of Zina).' (2011) 8 (1) Muslim World Journal of Human Rights 1; Peter Moszynski, 'Teenage Rape Victim is Stoned to Death as Violence Sweeps Somalia' (2008) BMJ 337.

[927] There is a good chance that nothing would come of such criminal cases because of the attendant difficulties. Commenting on the difficulty in prosecuting rape cases in the 1990s (a similar situation in Sierra Leone), Sandra A. O'Connor, a Baltimore County's prosecutor spoke of 'a highly antagonistic environment for survivors' She explained that 'It was just such a horror show for rape victims, and there were not great results in the courtroom.' Emphasis on a woman's sexual history by the defense often made victims feel like defendants, she said. She added that cases between acquaintances, the so-called 'he said, she said' cases, were extremely difficult to win. See Catherine Rentz, 'Cold Justice. "Who Is This Monster?"' ProPublica, May 20, 2021. The lack of successful prosecution, coupled with other factors protected career criminals and not the survivors. Consequently, rapists in Baltimore, as elsewhere, often committed more rapes and other crimes.

that this custom is a usurpation of the victims' rights. It is also a deprivation of the women's agency in relation to their capacity and ability to make autonomous choices and decisions.

Marrying the rapist conflicts with the treaty and constitutional rights to marry a person of one's choice. For example, **CEDAW** to which Sierra Leone is Party replicates provisions on the right to marry in an earlier human rights instrument, the **UDHR**.[928] For instance, its article 16 (1) (b) provides for freedom of choice and 'free and full consent' of the parties to marry. Being compelled to marry a rapist extinguishes long established treaty as well as domestic rights on the altar of patriarchy. Article VI (a) of the **Maputo Protocol** also provides for the 'free and full consent' of parties to a marriage. It states: *'No marriage shall take place without the free and full consent of both parties.'*

In a recent Indian case, the Supreme Court gave a broad and purposive interpretation of the right to marry. This precedent, if followed by courts in other common law jurisdiction**,** would help to advance women's rights. In two separate concurring judgements, a three-judge bench of the Supreme Court of India, set aside a 2017 order of the Kerala High Court which annulled the marriage of a Kerala Muslim convert girl Hadiya and Shefin Jahan.[929] It held that, 'The right to marry a person of one's choice is integral to Article 21 (right to life and liberty) of the Constitution.'[930] The court stated that:

> *The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable, …*

Adding that:

> *…choices in matters of marriage lie within an area where individual autonomy is supreme…Neither the state nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters. They form the essence of personal liberty under the Constitution.*

The court termed the idea of Hadiya's father's obstinate refusal to allow the marriage as:

> *'a manifestation of the idea of patriarchal autocracy and possibly self-obsession with the feeling that a female is a chattel.' 'The social values and*

---

[928] See for example, **UDHR,** art. 16(2).

[929] Hadiya converted to Islam in January 2016 and married Jahan months later. Her father viewed this as forced conversion. Claiming that his daughter had been 'brainwashed,' Hadiya's father moved the Kerala High Court to annul the marriage and send Hadiya to her parents' custody. See 'Right to Marry Person of One's Choice is Integral to Right to Life & Liberty: SC on Hadiya Case' *The Indian Express* (Noida, 27 July 2020).

[930] Section 21 provides: No person shall be deprived of his life or personal liberty except according to procedure established by law. In Sierra Leone, the equivalent provisions are section 16 of the **1991 Constitution** which provides for protection of right to life and section 17 that protects the personal liberty of persons.

morals have their space, but they are not above the constitutionally guaranteed freedom',

two of the judges said, adding that it is a constitutional and a human right.

Commonwealth decisions are not binding on the courts in Sierra Leone[931] but merely persuasive precedents. However, if followed, Hadiya's ruling would represent a big step forward in the protection and promotion of women's rights in Sierra Leone. Such a decision should help in eradicating a custom which permits rapists to marry their victims, generating further injustices. For the victim, in addition to the trauma of living with the rapist, she is denied the choice of a spouse, while compelled to live with, and bear children for a criminal. The likelihood of physical abuse, intimate partner violence, and marital rape are the new injustices she faces.[932]

A patriarchal practice, for the rapist, being allowed to marry a girl he has violated means he benefits from his crime, an action which violates the common law policy that no one shall be allowed to profit by his own wrong: '*nullus commondum capere protest de injuria sua propria.*'[933] In Sierra Leone, the recent prohibition of out-of-court settlement of cases of aggravated domestic violence by the **2007 Domestic Violence Act**[934] means, in theory, this discriminatory practice will no longer occur; but a lot remains to be done to achieve effective compliance.

Another key factor that may have influenced the return of Bush wives to their abductors is the absence of their voices during the **SL TRC** hearings. Failure of the Commissions to fully include women voices exacerbated the existing injustice of the patriarchal view of women as minors who cannot reason intelligently and therefore need men to speak for them.

[931] In *Akar v Attorney General* (1967-68) ALR SL. 283, the Court held that 'where principle enunciated in other Commonwealth cases are relevant to a case in Sierra Leone, the court may adopt the reasoning whereby they have been arrived at as a persuasive though not binding precedent.' (p. 298, lines 31-37)

[932] The documented impact of rape shows that in addition to developing anxiety and post-traumatic stress disorder, rape often has 'pernicious effects' in other domains of a woman's life, including her intimate relationships, how she views her sexual and social reputation, and the quality of her family and social relationships. See Margaret C Harrell et al., *A Compendium of Sexual Assault Research* (RAND 2009); Carin Perilloux *et. al*., 'The Costs of Rape' (2012) 41 Archives of Sexual Behavior 1099, 1104-1106.

[933] The state's failure to prosecute perpetrators supports this discriminatory customary law practice in which an unmarried woman's reputation may be salvaged by forcing her to marry her rapist. In many African countries, no statutory law prohibits marriage between perpetrators and survivors of sexual violence, and their customary laws permit such marriages. Although, article 336 of the **1966 Penal Code of Algeria**, for example, penalizes rape, article 326 absolves a man who abducts a girl under 18 without violence, threat, or deception if he later marries her.

[934] Section 20(2).

5.13. Absence of Women and Women's Voices at SL TRC Hearings

The absence of women's voices from post-conflict processes has been a matter of global concern for long. Although women often played active roles in peace initiatives, as well as in the conflict itself, gender imbalance generally exist in the legal and political institutions established in post conflict societies.[935] Gender deficits begin with omissions from peace-making processes, such as peace talks and continue in transitionary 'deal-making' that occur in new legal and political institutions**.**

In Sierra Leone for example, a combination of voices from various women's groups was the catalyst for the beginning of the meetings that eventually culminated in the signing of the **Lomé Peace Agreement**. Not surprising, the women's laudable initiative was not recognised. Despite their efforts, the women were ignored as only two women were included in the government's delegation of 10 members at the final negotiations in Lomé, Togo.[936] The discriminatory exclusion of women is contrary to express international treaty provisions to which Sierra Leone is party.

The **Maputo Protocol**, for example, specifically requires states to 'enhance the participation of women in the formulation of cultural policies at all levels.'[937] By providing for women's agency in the formulation of cultural policies, the Protocol seeks to advance in theory, women's rights to enter male dominated areas. In practice, however, the power disparities among potential discussants, in particular traditional rulers and rural women makes this provision a theoretical proposal, and one difficult to implement.[938] Bond noted correctly that the value of deliberation is limited in the context of African customary law.[939] The events that occurred during the **SL TRC's** hearings, discussed in this chapter attest to Bond's assertion.

Commenting on non-discrimination and equality between Sierra Leonean men and women, the **Human Rights Committee** in 2014 noted with concern the underrepresentation of women in both the public and private sectors, particularly in decision-making positions.[940] The lack of proportionate representation of

[935] Christine Bell, Colm Campbell and Fionnuala Ní Aoláin, 'Justice Discourses in Transition' (2004) 13 Social & Legal Studies 305, 320-322.
[936] '… and the rebel delegation of 10 members included one woman. Two civil society observer groups also present in Lomé – the Inter-Religious Council of Sierra Leone and a 13-member cross-section of secular CSOs – comprised some women', see Isha Dyfan, 'Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women' (7 November 2003) EGM/PEACE/2003/EP., 5, 6.
[937] Article XVII (2), Mukasa regards this as one of its greatest strengths, see Rosemary Semufumu Mukasa, *The African Women's Protocol: Harnessing a Potential Force for Positive Change* (Oxfam, 2009) 5.
[938] Bond, n 838, 468.
[939] Ibid, 468-469.
[940] CCPR/C/SLE/CO/1, 2014, n 56, para. 10.

women, the Committee added, is mainly due to persistent patriarchal patterns of behaviour and attitudes which manifest in discriminatory practices. Limited women's participation in formal and informal decision-making structures:

> *...could be attributed to the structural discrimination which women face in law and in practice, including the pervasive beliefs surrounding women's roles in decision-making, coupled with their multiple roles as wives, mothers, family caregivers and employees.*[941]

Ultimately, these practices perpetuate poverty, hinder schooling, and the attendant achievement of economic security, and thus act to impede women's mobility to key decision-making positions.

Noting the exclusion of African women from norm making, Banda aligns with feminists' conclusion that 'customary law is gendered and excludes the female voice,[942] just like international law[943] and general national law.[944] Mahoney, O'Hare and MacKinnon attribute the absence of female voices in the international legal system to *'[m]ale hegemony over public life and institutions.'*[945] This assertion is true of the customary legal system. The exclusion of women from decision-making processes is more extensive in communities, such as rural Sierra Leone, where the dominant legal system is customary law.

The general belief amongst feminists is that women's concerns and voices would be better accommodated, if women are represented in influential policy and decision-making positions in [national and] international bodies. Feminists proffer two major reasons why women's voices should be present in legal systems and institutions. They argue that women's participation in human rights processes and institutions directly affects the relevance of laws to women.[946] This is exemplified by the African proverb that says: **'If one tells of the place where the**

---

[941] UNDP and MoPED, *Barriers and Enablers of Women's Participation in Revenue Generation in Sierra Leone* (UNDP 2023) 30.

[942] Banda, n 819, 13, 14; Julie Mertus, 'State Discriminatory Family Law and Customary Abuses' in Julie Peters and P. Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge 1995) 135; Charlesworth, n 837, 108.

[943] Charlesworth et. al., n 6, 615ff, 640; Charlesworth and Chinkin, n 5, Edwards, n 573, 44.

[944] Anne Elizabeth Mayer, 'Cultural Particularism as a Bar to Women's Rights: Reflections on the Middle Eastern Experience' in Julie Peters and P. Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge 1995) 176; Mertus, n 942; Charlesworth *et. al*, n 6, 640.

[945] See Kathleen Mahoney, 'Theoretical Perspectives on Women's Human Rights and Strategies for their Implementation' (1996) 12 Brooklyn International Law 799, 810; Ursula A. O'Hare, 'Realizing Human Rights for Women' (1999) 21 Hum.Rts.Q. 364, 365-366; see also Catherine A. Mackinnon, 'Feminism, Marxism, Method and the State: Towards Feminist Jurisprudence' (1983) 8(4) *Signs* 635, 638.

[946] Andrew Byrnes, 'Using International Human Rights Law and Procedures to Advance Women's Rights' in Kelly D. Askin and Dorean M. Koenig (eds) *Women and International Human Rights* (Transnational Pub. 2000) 79, 96; Mary Eberts, 'Canadian Charter of Rights and Freedoms: a Feminist Perspective' in Philip Alston (ed) *Promoting Human Rights Through Bills of Rights: Comparative Perspectives* (Oxford UP 1999) 241.

rain met him, he is given a place to warm up by the fire.'[947] This means that if one explains her experiences or condition, she will receive the necessary help.[948] Obviously, a man cannot explain a woman's experiences and thus cannot enact laws that are relevant to her needs.

Nevertheless, feminists assert that token representation does not automatically translate to implementation of women's rights. A lone female voice has far less impact than two or more female voices speaking on women's issues. Hedlund confirms the importance of having several women in any political group or body, as there may be a 'numbers threshold' below which they may not speak up on women's issues.[949] If as Philips asserts, women politicians are reluctant to speak for women,[950] there are obvious advantages in having several women representatives in any institution.

Moreover, not having enough women in decision-making bodies creates a gap which is readily occupied by men. MacKinnon recognizes the difficulty in men representing women's interests, because *'[w]hen men sit in rooms, being states, they are largely being men.'*[951] And being men, in interpreting the law, Kaufman and Lindquist assert that their approach as well as that of women *'who have been socialized to accept the male elite's norms and interests as [their] own'*, is to construct women's lives from a male-centred perspective. They conclude that the woman's experience is therefore seldom recognized because the 'objective' application of law is a socially constructed enterprise.[952]

Consequently, the application of concepts such as 'reasonableness' and 'objectivity', for example, are consciously or unconsciously co-opted by men, to apply to their experiences rather than to those of women.[953] The search for equal rights may therefore result in a *'distorted (from a woman's perspective), yet logically consistent, case outcomes.'*[954] Similarly, Charlesworth argues that women have equal

---

[947] 'Igbo Proverbs and Meanings (Group 2)' < https://franpritchett.com/00fwp/igbo/proverbs/072_083.html > accessed 12 December 2022.

[948] Translated 'one does for him what ought to be done for him; that is, he is treated as he ought to be treated, and receives the help he needs.' African Proverbs Page <www.facebook.com/africanproverbspage/posts> accessed 19 June 2012.

[949] Gun Hedlund, 'Women's Interests in Local Politics' in Kathleen B. Jones and Anna G. Jónasdóttir, *The Political Interests of Gender Revisited: Developing Theory and Research with a Feminist Face* (Sage Pub. 1985) 101.

[950] Anne Phillips, *Engendering Democracy* (Polity Press 1991) 70.

[951] Catherine A. MacKinnon, 'Rape, Genocide, and Women's Human Rights' (1994) 17 Harv. Women's L. J. 5, 15.

[952] Natalie Hevener Kaufman and Stefanie Lindquist, 'Critiquing Gender-Neutral Treaty Language: the Convention on the Elimination of All Forms of Discrimination Against Women', in Julie Peters and Andrea Wolper (eds.), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge 1995) 114, 116.

[953] Catherine A. MacKinnon, 'Sex and Violence: A Perspective', in Elizabeth Hackett and Sally Haslanger (eds.), *Theorizing Feminisms: A Reader* (Oxford UP 2006) 266, 267.

[954] Kaufman and Lindquist, n 952, 117.

rights as men to participate in all aspects of economic, social, cultural, civil and political life.[955] These rights are enshrined in international and regional treaties, several of which Sierra Leone has ratified.

Feminists also agree that the only way the rights, interests, concerns, needs and desires of women can be fully articulated in a rights-based system is through the meaningful participation of women in human rights processes.[956] Women, backed by NGOs, have been in the forefront of the struggle to involve them to actively participate in customary law-making processes. Given the privileges enjoyed by men, the success of such a struggle appears to be in the distant future. Yet, this is not to suggest a lack of support for the struggle, since the ultimate gains will be enormous. Some of these gains have been articulated by feminist groups. However, African feminism rejects the exclusion of men from women's issues, as it views men as partners in problem solving and social change.[957]

In the context of violence against women, Charlesworth, Chinkin and Wright noted that the absence of women voices is because 'men generally are not the victims of sex discrimination, domestic violence, and sexual degradation and violence…' Consequently, *'these matters can be consigned to a separate sphere and tend to be ignored.'*[958] They argue that the lack of specific treaties on sexual violence in situations of armed conflict, can for example, be linked to the absence or low representation of women in treaty-making bodies.

The few provisions found in human rights and humanitarian law instruments on sexual violence are non-specific and were not meant to address the issue of forced marriage as an international crime. The three scholars therefore contend that *'The orthodox face of international law and politics would change dramatically if their institutions were truly human in composition'.*[959] My argument is that such a change would be more effective if began at the local level. The difficulty of effecting such a change in Sierra Leone, however, is because the interpretation of customary laws remains deeply rooted in patriarchy and ageism.

Exclusion of the female voice is not unique or limited to norm making but is pervasive in almost every sphere of life. In practice, communal decisions and spiritual affairs rarely involve women, so the absence of women's voices in the

---

[955] Hilary Charlesworth, 'The Gender of International Institutions' (1995) 89 ASIL PROC. 79, 84.

[956] See Charlesworth et. al., n 6, 613, 618; Hilary Charlesworth, 'The Public/Private Distinction and the Right to Development in International Law' (1992) 12 Australian Yearbook of International Law 190; A. Gallagher, 'Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System' (1997) 19(2) Hum.Rts.Q. 283, 331-333. (These processes include negotiating, developing, articulating, drafting, monitoring, implementing, and enforcing human rights norms.)

[957] Cited by Obioma Nnaemeka, 'Mapping African Feminism' in Andrea Cornwall (ed.) *Readings in Gender in Africa* (Indiana UP 2005) 32**.**

[958] Charlesworth et. al., n 6, 613, 622.

[959] Ibid.

SL TRC hearings is not an uncommon practice. My use of the phrase 'absence of women's voices' does not mean women did not testify at the hearings, but most testifiers were men, and men sometimes testified on behalf of women. Ms. Butegwa's graphic account of an event at a **SL TRC**'s village hearing illustrates this disreputable fact:

> *One commissioner said he went to a community where he was leading a team of recorders that were collecting testimonies. "The women did not come out, only the men came," "When they were asked why, the men said 'We can speak for the women'.*[960]

It is unknown how many women were denied the opportunity to testify, but Mansaray's study provides a partial indication of the number that were excluded. None of the women who attended the online seminar or those who participated in Mansaray's survey attended the hearings or testified. The reasons given range from ignorance about the hearings to not being given the opportunity to testify. Their answers included: *'I don't know about it'*[961]; *'I was living in hiding in a in a remote village'*[962]; *'I was not chosen'*[963]; *'I was not called to do so'*[964]; *'...was not picked though I wanted to testify'*[965] *'I was not given the opportunity to do so'*[966]

Men speaking for, or on behalf of women is a grotesque patriarchal norm that exacerbates the existing injustice illustrated by the Wolof proverb: '**The woman is like a child. (She must be guided at all times**.);'[967] and ends up creating new ones. The men in the story acted upon the discriminatory custom that clearly defines the status of men and women as dominant and submissive, respectively; as masculine and feminine traits are traditional and inflexible.[968]

As discussed earlier, traditionally, while men are regarded as social superiors and have power, prestige, and privileges, by virtue of being male, women are looked upon as social inferiors and treated as minors. A woman is regarded as a minor because she remains under the guardianship of a man for life.[969] Thompson and Erez contend that the view that a woman is the property of the father, husband, or some other head of the family has far-reaching implications for a woman's

[960] Ben-Ari and Harsch, n 458.
[961] Survivor H
[962] Survivor C
[963] Survivor D
[964] Survivor G
[965] Survivor F
[966] George Mansaray, 'Unpublished Survey of the Bush wives of Sierra Leone' June 2021; Survivor K
[967] Dickson and Mbosowo, n 891, 633.
[968] Quoted in O. P. Taylor: 'The Position of Women Under Sierra Leone Customary Family Law' in TO Elias *et. al.* (eds) *African Indigenous Laws* (Govt. Printer 1975) 130 (as cited in Thompson & Erez, n 448, 29.
[969] See para. 3.10.1.

rights,[970] as seen in the above account. These men could not possibly have known or given the correct narratives of the experiences of the victims of sexual violence. At best, such narratives would be inadmissible hearsay evidence.

Regarded as minors and chattels under customary law, women have no right to speak for themselves, reinforcing the *'the expectation that women are dependent upon men for their existence as an antithetic binary to autonomy'*.[971] This patriarchal expectation is illustrated by the Hausa proverb: '…**a married woman is the property of her husband**'[972] and that of an unknown origin: **'A woman is a flower in a garden; her husband is the fence around it.'**[973] This attitude contributed to exacerbating the discriminatory treatment of women as minors and creating new ones. I will argue that one of the new injustices created include the silencing of women's voices which supressed the truth about their captivity, contrary to principles of natural justice. This is another evidence of lack of respect for women's human rights in rural Sierra Leone, a key to the harms women experienced before, during and after the war.

5.13.1. SL TRC Hearings and Natural Justice

The principles of natural justice should be observed by judicial and non-judicial bodies such as TRCs. The **SL TRC** itself stated that a truth commission hearing is a quasi-judicial process.[974] In *lharazim and 10 Ors*. v *Sahid*,[975] the Sierra Leonean Supreme Court held that quasi-judicial bodies are to observe the principles of natural justice:

> *When a person or body has been charged with the duty of adjudicating upon disputes between, or upon rights of others, such person or body must follow certain chief rules, namely, to act fairly, in good faith, without bias and in a judicial temper and to give each party an opportunity of adequately stating his case. These principles are what are commonly termed principles of natural justice.*[976]

Furthermore, in *Popai & Anor* v *Margai, Returning Officer Moyamba South Constituency and Electoral Commission*,[977] the Supreme Court held that:

> *It is a violation of the principles of natural justice not to afford a party to proceedings before the Electoral Commission an opportunity of being*

[970] Thompson and Erez, n 448, 29.
[971] Karter-Hyett, n 882, 179.
[972] Dickson and Mbosowo, n 891, 636.
[973] Mary Liles, '150 of the Best African Proverbs About Life, Love and Family That Are Full of Poetic Wisdom' (*Parade*, 4 May 2021) <https://parade.com/1100530/marynliles/african-proverbs/> accessed 7 May 2021.
[974] Sierra Leone TRC, *Witness to Truth: Final Report of the TRC* (vol. 1, chapter 5: Methodology and Processes) (Graphic Packaging Ltd. GCGL, Freetown 2004) para. 202 [Hereinafter Chapter 5, TRC Report]; see also Chapter 1, TRC Report, n 791, para. 27.
[975] [1964-66] ALR SL 492.
[976] Ibid, 500, lines 4-8.
[977] [1968-69] ALR SL 1 (SC)

present when the proceedings are heard, and any decision upon such proceedings is voidable[978]

The same reasoning may be applied in situations where women were prevented from attending and/ or stating their cases before the **SL TRC**. By not allowing the women to 'adequately state their cases,' the **SL TRC** violated a principle of natural justice, particularly the *audi alteram partem* rule. The omission perpetuated entrenched patriarchal rules that promote inequality and offer weak redress to women.

In *Bryne* v *Kinematograph Renters Socy. Ltd*., [979] the court described natural justice as the elementary and essential principles of fairness. These principles, according to Ag. Chief Justice Cole, 'are founded in good sense and justice and established by the highest authority...'[980] Similarly, the **SL TRC** itself stated that 'While the Commission did not want to turn itself into a court of law, it was necessary that fair procedures be accorded to all persons appearing before it.'[981] However, contrary to this view, the elementary and essential principles of fairness were not complied with, as the victims were not given the opportunity to testify.

Nevertheless, the courts can interfere *'Where it is proved that there is a denial of the principles of natural justice or failure to proceed in a manner consonant with the elementary principles of justice, the courts are bound to interfere.'*[982] There still exists the possibility of women whose voices were silenced obtaining justice since they were denied fair hearing, particularly as freedom of expression is a fundamental human right recognized and protected under Chapter 3 of the **Constitution** of Sierra Leone.

5.13.2. Speaking for Crime Victims

Closely related to the absence of female voices from the hearings, is speaking on behalf **of** crime victims, which is an infringement of their human rights. The **Maputo Protocol** recognizes the rights of women to speak for themselves. This right is enshrined, indirectly in its article X (2)(e) which provides:

> *States Parties shall take all appropriate measures to ensure the increased participation of women: In all aspects of planning, formulation and implementation of post-conflict reconstruction and rehabilitation…*

A broad interpretation of 'participation in all aspects… of …implementation of post-conflict reconstruction and rehabilitation' would include adding women's

[978] Ibid, 4, lines 12-18; see also *Pyne-Bailey v Janneh* (1962) 2 SLLR 46 (SC), applied.
[979] [1958] 1 WLR 762 applied.
[980] Ibid.
[981] Chapter 5, TRC Report, n 974, para. 202.
[982] See *lharazim and 10 Ors*. v *Sahid,* n 975.

voices. In the same way, in its preamble and several articles, **CEDAW** requires state parties to ensure women participate in every sphere of life.[983]

The fact that victims need to be heard has also been accepted by several scholars. Madlingozi criticises the silent and inactive victims produced by transitional justice processes: persons who neither think nor speak for themselves.[984] Their voices have been highjacked by those who ostensibly represent the victims: the village elders, the transitional justice experts or entrepreneurs who speak about and for the victims. While acknowledging the lack of space or skills of victims to speak for themselves in some post-conflict situations, she queries the legitimacy of others speaking for and about victims, as this practice further disempowers and marginalizes them.[985] I support Madlingozi's contention which reflects the global nature of patriarchy. Globally, patriarchal norms promote practices that are inimical to the realization of women's rights.

Similarly, Alcoff notes the academic practice of developing 'theories that express and encompass the ideas, needs, and goals of others', and questions whether the discursive practice of speaking for others *'is ever a legitimate practice, and if so, what are the criteria for legitimacy? In particular, is it ever valid to speak for others who are unlike me, or who are less privileged than me?'*[986] Gilles Deleuze in a conversation with Foucault reminded him of his teaching something *'absolutely fundamental: the indignity of speaking for others.'*[987] Deleuze speaks of the failure to appreciate a theoretical fact that 'only those directly concerned can speak in a practical way on their own behalf.'[988]

What happened during the **SL TRC** hearings is akin to the high jacking of the voices of victims by the elders. The resultant inability of some victims to speak for themselves can be said to have distorted women's agency, thus robbing them of their human dignity. Closely related to the issue of speaking for victims is that of accepting forgiveness on their behalf. However, it is beyond the scope of this thesis, but a brief analysis will help to advance my argument that the lack of respect for women's human rights in rural Sierra Leone is key to the harms women experienced before, during and after the war.

---

[983] See articles 7, 8, 12 and 14.

[984] See generally, Tshepo Madlingozi, 'On Transitional Justice, Entrepreneurs and the Production of Victims' in Doris Buss *et. al.* (eds) *Sexual Violence in Conflict and Post-Conflict Societies: International Agendas and African Contexts* (Routledge 2014) 169.

[985] Ibid, 171, 173.

[986] Linda M. Alcoff, *The Problem of Speaking for Others* (1991) 20 Cultural Critique 5, 7.

[987] Deleuze in a conversation with Foucault, 'Intellectuals and Power' in Michel Foucault, *Language, Counter-Memory* (Cornell UP 1996) 209.

[988] Ibid.

5.14. Forgiving Perpetrators of Sexual Violence

Accepting the apologies of the combatants who fought during the war in Sierra Leone is equivalent to absolute amnesty for the grievous international crimes they had committed. The victims had no say or input in the granting of the amnesty nor in the decision to protect the perpetrators from prosecution. It is reasonable and generally accepted that only direct victims can forgive wrongs done to them. So, victims of sexual violence cannot be forced to forgive their abusers, nor can third parties offer forgiveness on their behalf. The victim's exclusive right to forgive has been affirmed in many discourses. For instance, Dryden states *'Forgiveness, to the injured doth belong.'*[989] As Griswold succinctly observes, it is *'taken for granted by almost all authors on the subject that only the injured party may forgive.'*[990] Portilla also contends that the act of forgiveness must be an individual prerogative that a victim of international crimes enjoys.[991]

On the contrary, in Sierra Leone, as well as in other countries, the well documented negative impact and the harms of sexual violence affect not only the violated women, but extend to families, local communities, and society at large.[992] Identifying reasons for sexual violence in conflict, Radhika Coomaraswamy states that 'to rape a woman is to humiliate her community.'[993] Violence against women is a systematic tactic of war often used to destabilize populations and destroy community and family bonds.[994] Rape is not just an attack on the individual woman, but also '… an attack on the whole community …a sophisticated form of political torture …used to punish suspected 'enemies' and to terrorize the population into submission.[995]

Based on the above definitions, a reasonable man might accept the role of the elders in Sierra Leone as 'parties with a stake in sexual violence offences.' The acceptance of apologies of the ex-combatants by the elders on behalf of victims of sexual violence may therefore not be deemed a usurpation of the victims' rights and a distortion of the women's agency. Likewise, as keepers of the culture and

---

[989] John Dryden, Conquest of Grenada by the Spaniards (London, 1672), Part n. Act I. Sc. 2, 121; see also T. Govier and W. Verwoerd, 'Forgiveness: The Victim's Prerogative' (2002) 21 (2) South African Journal of Philosophy 97.

[990] C. Griswold, *Forgiveness: A Philosophical Exploration* (Cambridge UP 2007) 117.

[991] Juan Carlos Portilla, 'A Forgiveness Law: The Path to Solve the Peace Versus Justice Dilemma' 35 (2015) B.C.J.L. & Soc. Just. 193, 202.

[992] As has been argued in this thesis.

[993] Radhika Coomaraswamy, 'Of Kali Bom: Violence and the Law in Sri Lanka' in M. Schuler (ed) *Freedom from Violence: Women's Strategies from Around the World* (OEF International/UNIFEM 1992) 49; see also Askin, n 594, 298; Kelly Dawn Askin 'Gender Crimes Jurisprudence in the ICTR: Positive Developments' 3 (2005) JICJ 1007, 1012.

[994] See HRW, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo* (2009) <www.hrw.org/sites/default/files/reports/drc0709web.pdf> accessed 4 July 2021.

[995] Jasminka Kalajdzic, 'Rape, Representation, and Rights: Permeating International Law with the Voices of Women' 21 (1996) Queens Law Journal 457, 463.

traditions of the community, elders should play a prominent role in peace and justice matters, including reconciliation. However, the role they play should not be a dominant one, eclipsing those of the victims. If the goal of transitional justice processes and interventions is to be realised, the voices of victims should be heard as well.

Under any proposed forgiveness process for international crimes, victims of these crimes must therefore actively participate in the proceedings (legal or otherwise) that may lead to the granting of a pardon for such crimes. Thus, a written statement of a victim-in which the victim acknowledges the application for a pardon made by his or her perpetrator, forgives the offense, accepts the apology, reparation, and the guarantee of non-repetition offered-must be a necessary condition that any forgiveness process must include in its regime.

5.15. Conclusion

Applying the literature on women's human rights to the Sierra Leone situation, this thesis attempted to prove that the unqualified application of customary law in the proceedings of the SL TRC reflected the dichotomy between promotion of women's rights and the promotion of national peace. The Commission's focus on the promotion of national peace undermined the achievement of the philosophy of the **Lomé Peace Agreement**, which is to hold perpetrators accountable to the truth and restore the dignity of victims by way of truth telling as opposed to trials and prosecutions.[996]

The desire to sustain 'peace' at all costs, which incidentally was the guiding principle of the **Lomé Peace Agreement**, was considered more important than obtaining justice for the victims. Thus, contrary to the applicable **Lomé Peace Agreement** provision,[997] special attention was not given to women who had been 'particularly victimized during the war.' Survivors of sexual violence, and, forced marriage therefore continue to be subjected to various forms of indignities, making survival a daily struggle.

The **SL TRC** incorporated innovative gender strategies into its processes but rather than challenge and change patriarchal norms and attitudes, it accommodated and reinforced them. Consequently, it ended up exacerbating existing injustices, such as traditional discriminatory practices against women and creating new ones. By adopting discriminatory customary norms, the **SL TRC** missed the chance to fully investigate and research the '…key events, causes, patterns of abuses or violation and the parties responsible'.

[996] Chapter 1, TRC Report, n 791, para. 18.
[997] **Lomé Peace Agreement**, article XXVIII (2).

In relation to sexual violence against women, the contrived apologies and their acceptance by the village elders created the difficulties of obtaining individual statements and gathering additional information from the perpetrators. In the absence of full and truthful apologies from the perpetrators, the **SL TRC** was unable to effectively fulfil its section 6 (2) (a) mandate to investigate and report on the causes, nature and extent of forced marriages to the fullest degree possible,

As a quasi-judicial body, the **SL TRC** did not comply with the elementary and essential principles of natural justice. The absence of women and women's voices at the hearings, and the presence of village elders who acted on behalf of victims are entrenched customs contrary to the principles of natural justice. The **SL TRC** failed to apply the human rights standard to these and other discriminatory customs it had adopted. Had the **SL TRC** done so, the level of societal awareness of gender inequality would have increased and the post-conflict experiences of the survivors of sexual violence might have been very different. Thus, the **SL TRC** lost the opportunity to strengthen Sierra Leone's attempts at eliminating existing patriarchal and gender stereotypes on the roles and responsibilities of women and men in the family and in society. Arguably, by not adopting a human rights approach, the **SL TRC** disregarded the human rights of the Sierra Leonean woman.

In addition, perpetrators were neither held accountable to tell the truth, nor were recommendations made for their prosecution for the crimes committed. I believe that had the incentive or offer of forgiveness been linked to the admission of guilt, the perpetrators may have been encouraged to admit their wrong doings. This would have served as an acknowledgement that truth matters to women. It would have also served as a recognition of the survivors of sexual violence as victims who had suffered traumatizing and irreparable harm, and not collaborators. Such confessions would have at least ameliorated the additional harm of rejection and ostracization faced by forced marriage survivors and prevented their return to potentially abusive relationships.

Moreover, because the perpetrators' apologies did not include how the 'Bush wives' were abducted and forced into conjugal relationships, the widespread belief that they collaborated with their abductors persisted. The deplorable manner survivors of sexual violence were treated by family and the society is traceable to the erroneous belief and entrenched patriarchal rape myths. Unfortunately, the stigma, ostracization and marginalization faced by forced marriage survivors is mainly due to these discriminatory attitudes. The **SL TRC** hearings did not provide an enabling environment for demystifying such myths and discrediting the erroneous beliefs.

6. Chapter Six: The (Missing) Women's Voices

6.1. Introduction

This chapter includes the testimonies of the Bush wives given in an informal setting as opposed to the formal official setting of the **SL TRC** and the **SCSL**. Testifying in formal mechanisms has been shown to hinder the participation of women and serves to 'strengthen their marginalisation and invisibility, preventing these mechanisms from providing remedies to women in general and 'Bush wives' in particular'.[998] A four-country study identified some conflict-related factors that exacerbated the challenge of reporting. For example, rape committed by a member of a particular rebel, military, or ethnic group reportedly caused even greater stigma and social isolation for some survivors.[999] The degree of stigma associated with sexual violence prevented many survivors from reporting these acts to the police and the formal legal system.[1000]

On the contrary, this was not the case in informal settings, since the victims were physically interacting with persons known to them. The 2021 'Zoom' meeting, an informal meeting, titled **'**Survivors of Sexual Violence: Life after the War,' was arranged by Mr. George Abu Mansaray, the President of the Sierra Leona Social Workers Association. Eight Bush wives, who had participated in the previous study organized by Mr. Mansaray, three Social Workers who had assisted the Bush Wives[1001] and Ruth Stark,[1002] were present physically. Other participants included fifty-nine (56) online attendees. The meeting which lasted for about an hour, was held at Bullom Compound, Rogbanty-Makolo Lungi, Kaffu Bullom, Portloko District, Sierra Leone. It was not part of the **SL TRC** programme.

While the **SL TRC** hearings were held in public, involving large audiences of sometimes up to 700 people, the Zoom meeting was more private. The privacy offered to the Bush wives by being in a room with an 'invisible' online audience and 13 (thirteen) persons physically present made them more willing to answer private questions.

I also relied on unpublished research on the same subject conducted by Mr. Abu Mansaray and a research team, comprising social workers, spread across the

---

[998] See Philipp Schulz and Anne-Kathrin Kreft, 'Accountability for Conflict-Related Sexual Violence' (24 February 2022) <https://doi.org/10.1093/acrefore/9780190846626.013.702> accessed 12 September 2023; Kim Thuy Seelinger and Julie Freccero, 'The Long Road: Accountability for Sexual Violence in Conflict and Post-Conflict Settings' (Human Rights Center, UC Berkeley 2015) 60-61.
[999] Seelinger and Freccero, ibid, 2, 27ff (Findings are based on a report summarizing a four-country study conducted by the Sexual Violence Program of the at the Human Rights Center, UC Berkeley, School of Law).
[1000] Ibid.
[1001] Namely Mariama Dumbuya, Mary Edward Kamara and Patricia Alie Kamara.
[1002] The former president of the International Federation of Social Workers, 2014-2018.

country in 2021. Both projects focused on the post-conflict experiences of the Bush wives. The Bush wives were asked questions about their post-conflict experiences with families, communities, and their ex-abductor husbands. Three of them who did not understand the English language spoke in the local *Krio* language. One of the Social Workers translated the Krio language into the English language for the benefit of non-*Krio* speakers. The questions asked the Bush wives were the same as those administered by questionnaire by Mr. Mansaray and his research team. The audience were also allowed to ask them questions.

Applying the literature on women's human rights, this chapter aims to investigate the experiences of the Bush wives told by them in an informal setting. This will help uncover why their experiences were different from the common *Krio* phrase ***'bad bush nor dae for troway bad pekin***' which translates: 'there is no evil bush or forest to throw away a bad child.'

6.2. The '*Bad Bush Nor Dae For Troway Bad Pekin*' (There is no Evil Bush to Throw Away a Bad Child)

This phrase was adopted by the **SL TRC** and widely disseminated throughout Sierra Leone.[1003] In a practical sense, this phrase means that no matter what a child has done, the community always has a place for him/her. The lived meaning of the expression extends beyond the individual and his or her community and may equally be applied to adults. The adoption of the ***'bad bush***...' phrase carries the underlying assumption that an African is at home in their community and that the community will always have a place for them.[1004] It speaks to the 'ideal African society that holds that an African will always want to be in her community, amongst her people, and that the community will always support or have a place for her'[1005]

Although, this slogan was adopted by the **SL TRC** and the international transitional justice community in general, it appears to have been used only as a means of facilitating the reintegration of ex-combatants.[1006] Ironically, their victims, the 'Bush wives' and amputees were apparently excluded. The phrase was a fallacy as the excluded groups were not wanted in their home communities. Several accounts have linked the stigma suffered by these women and their children to their relationship as 'wives' to the rebels.[1007] The use of the terms 'wife' and 'marriage' by the victims in their testimonies, and by the perpetrators gave credence to the unfair widely held belief that the relationships between the

---

[1003] Stovel, n 874, 306.
[1004] J. Caulker, 'Fambul Tok: Reconciling Communities in Sierra Leone"'(2011) 23 Accord 52-54.
[1005] Stovel, n 874, 305, 306.
[1006] Caulker, n 1004.
[1007] See Coulter, n 124, 210.

rebels and their victims was consensual, resulting in hostile reactions from their families and communities. As mentioned earlier, Bush wives, particularly those with children fathered by rebels, faced challenges that prevented them from returning to their villages. This made them vulnerable to continuing abuse.[1008]

Survivor C was rejected: *'I did not receive any warm welcome. I was rejected categorically. No space or the condition for reconciliation. Devastating for me anyway.'*[1009]

Survivor N's fate was not different. She narrated how:

> *The family was not cooperative in any way. It was frustrating though as I had no peace and a way of live [sic]. I could not stay in my village. Family members were rude at[sic] me insulting me and not giving any opportunity for socialising with them as a way to quell their wrath against me or for me.*[1010]

Coulter notes that often, '(…) people feared that rebel women could become violent and wreak havoc in the community' and so such women were marginalised and excluded from their communities.[1011] Many villagers had witnessed the terrible crimes they had committed while with the rebels. Some had killed, maimed, and committed arson, often under the influence of drugs. As one of the survivors narrated: *My actions whilst in captivity was horrendous. I was drugged and that gave me the guts to maim amputate family member, some friends and strangers.*[1012]

Another survivor narrated how:

> *As an initiation rite to the rebel forces abducted victims are tracked to kill burn and loot their village and especially from the family you belong. I killed the oldest woman in my village in front of my people.*[1013]

Survivor E, for example, was chased out of her village:

> *I was chased out of the village after identifying me as their killer daughter. The social worker facilitating the exercise was also chased out. We escaped using the motor bike of the social worker.*[1014]

Another survivor narrated how she was chased out of her village. She said:

> *The people in my community had no place for me. Their facial expressions and verbal comments were frustrating. No room in any shape or form for confessions and reconciliations. I remain devastated to date.*[1015]

[1008] Ibid, n 174.
[1009] Ibid, Survivor C.
[1010] Ibid, Survivor N.
[1011] see Coulter, n 124, 210.
[1012] Mansaray, n 966, Survivor C.
[1013] Ibid, Survivor E.
[1014] Mansaray, n 966, Survivor E.
[1015] George Mansaray, 'Survivors of Sexual Violence: Life After the War' (Webinar, 8 July 2021); Survivor C.

Some survivors had worse experiences than rejection and stigmatization. Some of the survivors who had committed atrocious crimes received death threats. Survivor E, for example, who had killed the oldest woman in her village related that:

> *The people started ganging up in readiness to attack and kill me. Utterances of killing me was loud and clear. "We don't want you here - Murderer, we will slaughter you in cold blood, you have bad blood.*[1016].

Survivor F also received death threats as follows:[1017]

> *The blood of innocent souls in your hands. The village turned upside down upon realising it was me. I used my bush tactics to cleverly escape. I was picked up by the social worker on my way to safety on his motor bike.*[1018]

Given that members of their families were often present during abductions but were unable to protect them, aggravated the injustice they suffered. A survivor who was rejected by her family appealed for a platform to tell her story, in the hope that the matter would eventually be resolved. She asked:

> *My question is ever since I returned, my family never accepted me, they didn't give a listening ear to my stories. I do not know if there is any way you can create a platform for us to explain our stories. Even if they cannot accept us but at least they can listen to our own story, our own side of the story that all that happened wasn't our fault. So, I do not know if there is any way you can create a platform for us to meet them, even if we do not meet them in person but at least just a platform that we can communicate our stories to them so they can listen to us.*[1019]

However, other survivors were lucky as they were received warmly by their kind and considerate families. According to Survivor D*: They knew I was forcefully taken and raped by bandits. They needed to see me alive no matter what. Others died in the process, I received a warm welcome.*[1020] For Survivor G, the warm reception was even extended to her bush husband as she narrated how: *My family opened up doors for me. Gave me shelter, food clothing for me and my darling husband.*[1021]

Bush wives who were unfortunate not to have kind and considerate families, or who had killed and maimed people in their villages had no choice but to return to their ex-abductor husbands or become sex workers. Survivor C returned because: '*He was the only person I could call my beacon of hope and my source of joy. He cared for me*

[1016] Ibid, Survivor E
[1017] She did not divulge what she did wrong.
[1018] Mansaray, n 1015, Survivor F
[1019] Ibid, Survivor L. Incidentally, there was no need for interpretation as she understood English language.
[1020] Ibid, Survivor D.
[1021] Ibid, Survivor G.

and our kids'. Survivor O stayed on with her bush husband because she has no family. She says: '*He is the one and only hope I have. My kids are my proxy [sic]. I am happy with him'*. Clearly, to the survivors, home is wherever they are accepted.

6.3. 'Home is not where we live. Home is where we belong.' [1022]

Returning 'home' meant more to Bush wives than mere geography, as aptly illustrated by the above African proverb. It meant acceptance and reintegration even into a patriarchal society that discriminates against them. Many female returnees were survivors of rape and forced marriage or who had no partners,[1023] and had small children to take care of after the civil war.[1024] The fact that the traditional child rearing role hampered their ability to gain employment, was overlooked by the communities that 'disqualified' them for reintegration.

However, the additional burden these group of returnees put on already strained resources was a major reason they often faced exclusion by family and social groups. Ex-combatants were therefore more welcome for not being burdensome and for the expectation of what they may contribute to the community.[1025]

6.4. Conclusion

It is questionable whether Bush wives would have been accepted in rural communities, even if they could support themselves. The rejection they faced is mainly due to the high premium placed on virgin brides, which discriminately, does not apply to males. The patriarchal understanding is that girls who have been raped are 'spoilt goods' and unsuitable for marriage.[1026] Traumatized by their horrific experiences during the war, stigmatized and rejected after the war, survivors of forced marriage were compelled to return to the only persons who accepted them: their 'ex-bush husbands'.

Unfortunately, the male rebels who committed atrocities were forgiven and reintegrated into their communities. The vastly different treatment of the returning female victims and the male perpetrators of sexual violence is horribly gendered, and exacerbates the injustices female victims of sexual violence endure. The ease with which male perpetrators of heinous crimes were forgiven and the reluctance to forgive their female victims is intricately linked to entrenched societal patriarchal attitudes and norms. Evidently, the harms women

[1022] DO Thompson, African Proverbs Page < https://www.facebook.com/africanproverbspage/posts/african-proverb-home-is-not-where-we-live-home-is-where-we-belongmeaning-in-nige/5485196188220460/> accessed 5 May 2020.

[1023] Either lost their husbands during the war or had been abandoned or divorced by their husbands because of being victims of sexual violence.

[1024] HRW, n 163; Denov, n 267, 167.

[1025] Denov, ibid.

[1026] See pp. 62, 89.

experienced before, during and after the war is closely linked to the lack of respect for women's human rights in rural Sierra Leone.

7. Chapter Seven: Conclusion

7.1. Introduction

Applying the voices of the Bush wives and the literature on women's human rights and transitional justice to the Sierra Leone situation, this thesis attempted to prove the main argument that the lack of respect for women's human rights in rural Sierra Leone is key to the harms women experienced before, during and after the war. In rural Sierra Leone, gendered customary law norms function to constrain the behaviour of women more than men. Traditional or stereotypical attitudes towards gender and marital roles are inextricably linked to the war crime of forced marriage, and to why Bush wives were chased away from home, forcing their return to ex-abductor husbands. For example, while gendered 'marry-your-rapist laws' enabled sexual violence against women during the war, hierarchal gendered spousal roles enslaved Bush wives in such forced marriages. Unfortunately, both domestic and international legal regime failed the women, while reinforcing the gendered and disparate application of customary law norms to women and men.

The patriarchal nature of the Sierra Leonean society was key to the harms women experienced during and after the war. In rural Sierra Leone, patriarchal practices shape and perpetuate gender inequality and rob women of any form of control over their lives. Violence against women has been a continuum in the history of Sierra Leone. During the war, gender-based violence was perpetuated as a tool of submission and control on women's bodies and lives, based on the patriarchal culture and a fragile security and legal system that breeds impunity.

Survivors of forced marriage were denied access to justice because the government and transitional justice mechanisms condoned patriarchal practices and did not effectively address women's concerns. They failed to fully consider the extent of harms women experienced during the conflict and post-conflict, thus hindering their healing and re-integration into society. The thesis has attempted to prove that the roles both domestic and international regulatory frameworks and the **SL TRC** played facilitated patriarchy, and through their actions and inactions endorsed the subordinate status of women in Sierra Leone.

By examining the effects that social structures have on the place and status of rural women, it tried to prove that the structures and systems serve as barriers to women's economic development. An important factor that influenced the negative experiences of the Bush wives was that despite Sierra Leone's commitment to gender equality, entrenched patriarchal power structures which were accommodated and reinforced exacerbated existing injustices and created

new ones for the Bush wives. Existing injustices such as patriarchal structure of male violence and patriarchal relations in sexuality which are commonplace in customary marriages were exacerbated. New injustices created included the continuing forced marriages or conjugal unions that the Bush wives were forced to enter with their ex-abductor husbands. These unions occurred with the attendant risk of domestic violence and the loss of the customary and statutory benefits of a valid customary law marriage.

In summary, the transitional justice processes and institutions in Sierra Leone did not adequately address the human rights of women. Contrary to its obligations as State party to several regional and international standards on women's rights, Sierra Leone failed in many instances to respect, protect, and promote women's rights. This is despite the common knowledge of the heinous atrocities inflicted on girls and women during the war. The harms this vulnerable group of persons, and in particular victims of forced marriage suffered, have been largely ignored by transitional justice mechanisms.

This is because of the major focus of transitional justice on legal accountability mechanisms: formal trials or 'informal' truth commissions which overlook private harms. In these settings, the experiences and needs of women are absent or silenced by the general discourse of accounting for the past. The undue emphasis on forgiveness without confession of the atrocities committed by perpetrators of heinous crimes, including those of a sexual nature, meant victims were further denied justice, as the opportunity for revealing the truth about the passive role the female victims of forced marriages played was lost.

Relegated to the home and subject to the rule of men, the rural women of Sierra Leone remain shackled by the constraints of ancient traditions, perpetrated by the weight of narratives that reiterate male domination. The lack of enforcement of constitutional enshrined principles relating to gender equality and specific laws prohibiting discriminatory practices contribute to the persistence of patriarchal patterns of behaviour and stereotyping that reinforces expectations of women's subordination to men.[1027] Such attitudes end up sustaining the erroneous belief in males' right to objectify women resulting in the expectation of their entitlement to sex as of right and not as of choice.[1028] Moreover, societal acceptance of Sexual and Gender Based Violence (SGBV) in the private sphere, either as a means to

[1027] See **CEDAW**, article 5a; 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 4th, 5th, 6th and 7th Periodic Report of States Parties: Uganda (25 May 2009) UN Doc CEDAW/C/UGA/7, paras. 62 & 68.
[1028] Kartar-Hyett, n 882, 195.

control or punish women, and the absence of sensitivity to the plight of victims of forced marriage, ensures society is largely indifferent to impunity for SGBV

Apparently, the gender friendly laws were enacted, not for utilitarian purposes but to an end. The end being the attraction of humanitarian aid from, and soft trade agreements with the West. The global community, according to Kartar-Hyett, appears to be complicit in accepting these gender laws without additional action as evidence of positive human rights developments.[1029] From the foregoing, it is obvious that both international and domestic law failed Sierra Leonean women in many respects. The law failed to protect women from sexual and other forms of abuses during and after conflicts. Failure of the twin transitional justice mechanisms to fully consider the harms associated with the conflict, and lack of accountability of perpetrators for the grave crimes committed, further exacerbated rather than ameliorate the harms Bush wives suffered because of their subordinate position as women.

This thesis concludes that initiatives to diminish gender inequality in the society require more than mere legislative undertaking, but rather active social actions and a change in the mindset of individuals. A lot has been done since the war ended to promote women's rights in Sierra Leone, and the government is accomplishing a lot of good. However, 'gender equality' means more than enacting gender-friendly legislation and making policy statements. To eliminate violence, the social, political, and economic position of rural women should be improved. This should begin with the abolition of gendered customary law norms that function to constrain the behaviour of women more than men.

7.2. Recommendations

In support of the **UNFPA**'s statement that '[s]urvivors do not need pity, but a community that is open and ready to provide every form of support',[1030] this thesis makes the following recommendations. Since states in transition are often too poor to undertake adequate rehabilitation of war victims, there is an urgent need for the international community to support such states. This will involve providing needed protection to Bush wives and their children in order to prevent them from being re-traumatized by falling victim to crimes of sexual violence, such as continuing forced marriage.[1031] The support could be in the form of adequate financial resources to address funding shortfalls, and the training of

---

[1029] Ibid.

[1030] UNFPA, 'Fighting Stigma Against Survivors of Conflict Related Sexual Violence Through Community Activism in Bosnia and Herzegovina' 19 June 2018 < https://ba.unfpa.org/en/news/fighting-stigma-against-survivors-conflict-related-sexual-violence-through-community-activism> accessed 30 April 2021.

[1031] Lack of protection may lead to their becoming victims of other crimes such as rape, forced prostitution, forced marriage, and trafficking in persons.

local staff in local NGOs and state governments to acquire expertise on gender and conflict-related sexual violence.

To ensure full accountability for crimes of sexual violence, amnesty provisions must be excluded from peace agreements.[1032] Ceasefire and peace agreements should contain provisions that at a minimum stipulate sexual violence as a prohibited act, with no limitation period for penalties. The UN Security Council should, as urged by the Secretary-General on conflict-related sexual violence, enhance accountability by including sexual violence as part of the designation criteria for sanctions.[1033] The stigmatization of survivors of sexual violence should be denounced and efforts should be made to elevate their social status. This would involve the creation of awareness as to the plight of survivors and significant assistance, in the form of legal aid, specialized services for survivors and rehabilitation programmes.

Meaningful socioeconomic reintegration support should be provided to improve the fallback positions of victims of sexual violence returning to their homes, in particular Bush wives and their children. Awareness-raising campaigns would help Bush wives not to be considered as collaborators but rather victims or survivors of war. Mobilization of communities to work in de-stigmatization of survivors of conflict-related sexual violence should be prioritized. There is need to encourage local communities to take responsibility and fight against stigma by challenging harmful patriarchal norms, including social acceptance of sexual violence against women and victim-blaming. Community mobilization campaigns should involve all stakeholders, including women's groups, religious and traditional leaders, and NGOs, to help shift the stigma of sexual violence from the victims to the perpetrators The urgency to alleviate the stigma associated with sexual violence is due to its life-long, and sometimes lethal, consequences for both survivors and their children.

While the physical and emotional harms associated with torts such as rape, false imprisonment and forced labour are covered by Sierra Leonean law, enforcement of the law is weak. The exclusion of areas of customary law from constitutional protection effectively erase guarantees of gender equality enshrined in domestic and international laws from women's personal lives. Past perpetrators should be held accountable, and survivors should receive justice, adequate services and reparations. While no monetary compensation could repair the harm they had

[1032] The international community can strengthen the capacity of national institutions to ensure accountability for past crimes, and for prevention and deterrence of future crimes, but the granting of both formal and informal amnesty prevents accountability.

[1033] UNSC, Report of the Secretary-General on Conflict-related Sexual Violence (23 March 2018) UN Doc S/2018/250, para. 97.

suffered, a positive outcome of claims against bush husbands should not be overlooked. Given the economic status of the survivors, this thesis suggests that limitation periods provided for by the **1961 Limitation Act** should be extended to enable adequate time for actions to be filed.[1034] The saying 'justice delayed is justice denied' should not apply in these circumstances, so long as justice is served.

Moreover, a better understanding of the lived experience of survivors is essential for those engaged in addressing crimes of sexual violence. It ensures that violence is not overlooked or trivialized by practitioners who may not always recognise these acts, and it provides survivors with recognition and validation of their experiences. Additionally, as sexual violence is better understood, laws, policies and practices can be developed to address sexual violence more effectively.[1035]

Finally, we are cognisant of the fact that customary laws and practices that subordinate women and deny them agency are difficult to eliminate; given that entrenched patriarchal and class interests will continue to be maintained. Effective implementation of the proposed recommendations would therefore not be an easy task, 'if effectiveness is assessed in terms of the degree of compliance with legal norms.'[1036] Allot correctly suggests that one of the reasons people comply with norms is if they perceive it to be to their advantage to do so, not because they are binding.[1037] Since the effective realization of women's human rights is subject, to a large extent on how men perceive gender sensitive laws, the challenge would be how to make men see the advantages of such laws. It's not an insurmountable challenge.

So, although I support Kane, Oloka-Onyango and Tejan-Cole's argument that *'…criminalizing behavior (for example with regard to gender-based violence, marital rape or defilement) is not, on its own, an effective solution if people are unable to act differently'*,[1038] working with male children should produce better results. While men's behaviour and attitude to women's rights may be difficult to change because of the

[1034] Generally, the limitation period is three years for actions for damages for negligence, nuisance, or breach of any duty, contractual or otherwise, where the damages claimed consist of or include damages for personal injuries. The limitation period is triggered or starts running on the date on which the cause of action accrued.
[1035] Hague Principles, n 103, 9.
[1036] Allot, n 843, viii.
[1037] Ibid, 40.
[1038] Minneh Kane et. al., 'Reassessing Customary Law Systems as a Vehicle for Providing Equitable Access to Justice for the Poor' Paper presented at the World Bank Arusha Conference on 'New Frontiers of Social Policy' – December 12-15, 2005, 30 < https://landwise-production.s3.us-west-2.amazonaws.com/2022/03/Kane_Reassessing-customary-law-systems-as-a-vehicle-for-providing-equitable-access-to-justice-for-the-poor_2005-1.pdf> accessed 12 November 2021.

‘patriarchal benefits’ they enjoy, a possible solution could be the early sensitization of male children on the harms caused by such practices.

List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights/ African Commission on Human and Peoples' Rights
AFRC	Armed Forces Revolutionary Council
AHRLR	African Human Rights Law Reports
AIDS	Acquired Immune Deficiency Syndrome
AFJICL	African Journal International and Comparative Law
AJIL	American Journal of International Law
Am.J.Soc	American Journal of Sociology
APSR	American Political Science Review
Am.Phil.Q.	American Philosophical Quarterly
ARSRC	Africa Regional Sexuality Resource Center
ASIL PROC	American Society of International Law Proceedings
ASLR	Aberdeen Student Law Review
Am.Soc.Rev.	American Sociological Review
AU	African Union
B.C.J.L. & Soc. Just	Boston College journal of Law & Social Justice
Berkeley J. Int'l L.	Berkeley Journal of International Law
British Ybk Intl L	British Yearbook of International Law
Can.J.Afr.Stud.	Canadian Journal of African Studies
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CDF	Civil Defence Forces (formerly Kamajors militia)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
Colum.Hum.Rts.L.Rev.	Columbia Human Rights Law Review
Colum.J.Gender & L.	Columbia Journal of Gender and Law
Cornell Int'l L.J.	Cornell International Law Journal
CRC	Convention on the Rights of the Child/Committee on the Rights of the Child
CSSH	Comparative Studies in Society and History
DDR	Disarmament, Demobilisation and Reintegration
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECCJ	Economic Community of West African States Court of Justice

ECOMOG	Economic Community of West African States Monitoring Group
ECOSOC	UN Economic and Social Council
ECOWAS	Economic Community of West African States
EHRR	European Human Rights Reports
EJIL	European Journal of International Law
Ecc LJ	Ecclesiastical Law Journal
FGM	Female Genital Mutilation
Fam.L.Q.	Family Law Quarterly
FLR	Family Law Reports
Fem.L.S.	Feminist Legal Studies
Geo. Wash. Int'l L. Rev	George Washington International Law Review
Goettingen J. Int'l L.	Goettingen Journal of International Law
Harv. Hum. Rts. J.	Harvard Human Rights Journal
Harv Women's L. J.	Harvard Women's Law Journal
Harv.Int'l L.J.	Harvard International Law Journal
HIV	Human Immunodeficiency Virus
HRC	Human Rights Committee
Hum.Rts.Q.	Human Rights Quarterly
HRR	Human Rights Review
HRW	Human Rights Watch
HWLJ	Hastings Women's Law Journal
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ Rep.	International Court of Justice Reports
ICL	International Criminal Law
Int.C.L.R.	International Criminal Law Review
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
Int'l J.Comp. & Applied Crim.Just.	International Journal of Comparative and Applied Criminal Justice
IJHR	International Journal of Human Rights
Int. J.L.C.	International Journal of Law in Context
IJTJ	International Journal of Transitional Justice
IRIN	Integrated Regional Information Networks

IUCN	International Union for Conservation of Nature and Natural Resources
IWPR	Institute for War and Peace Reporting
JICJ	Journal of International Criminal Justice
J. Int’l Human. Legal Stud.	Journal of International Humanitarian Legal Studies
JISED	Journal of Islamic, Social, Economics and Development
J Legal Plur	Journal of Legal Pluralism and Unofficial Law
JL& Pol	Journal of Politics and Law
JMAS	Journal of Modern African Studies
LJIL	Leiden Journal of International Law
LRA	Lord’s Resistance Army
LSE	London School of Economics and Political Science
Mcgill L. J.	McGill Law Journal
MoPED	Ministry of Planning and Economic Development
MSWGCA	Ministry of Social Welfare, Gender and Children’s Affairs
NGO	Non-Governmental Organisation
NPFL	National Patriotic Front in Liberia
OJLS	Oxford Journal of Legal Studies
PHR	Physicians for Human Rights
PTC	Pre-Trial Chamber
RIAA	Reports of International Arbitral Awards
Rev.Int’l Stud.	Review of International Studies
RSCSL	Residual Special Court for Sierra Leone
RUF	Revolutionary United Front
SARDC	Southern African Research and Documentation Centre
SCSL	Special Court for Sierra Leone
SGBV	Sexual and Gender-Based Violence
SLA	Sierra Leone Army
SL TRC	Sierra Leone Truth and Reconciliation Commission
STD	Sexually Transmitted Diseases
SLPS	Studies in Law, Politics, and Society
TRC	Truth and Reconciliation Commission
U Botswana LJ	University of Botswana Law Journal
UDHR	Universal Declaration of Human Rights
UJIEL	Utrecht Journal of International and European Law

UNAMSIL	United Nations Mission in Sierra Leone
UNFPA	United Nations Population Fund
UNSC	United Nations Security Council
UNTS	United Nations Treaty Series
UP	University Press
UPR	Universal Periodic Review
UPRR	Universal Periodic Review Reports
USIP	United States Institute of Peace
VAWG	Violence Against Women and Girls
Vienna Online J on Int’l Const L	Vienna Online Journal on International Constitutional Law
Wash. J. Envtl. L. & Pol’y	Washington Journal of Environmental Law and Policy
WHO	World Health Organisation
Wld.Pol.	World Politics
Yale LJ	Yale Law Journal

Table of Cases

Sierra Leone

Akar v *Attorney General* (1967-68) ALR SL 283
Jalloh v *Turay* [2010] SLCA 11
Popai v *Margai* [1968-69] ALR SL 1 (SC)
Pyne-Bailey v *Janneh* (1962) 2 SLLR 46 (SC)
Re Estate of Turay, Turay v *Carew* [1972-73] ALR SL 177 (HC)
Wie alias Peter v *Kokoh* (1937-49) ALR S.L. 100.

Other Jurisdictions

Canada

Suresh v *Canada (Minister of Citizenship and Immigration)* [2002] 41 ILM 945 (SC).

England and Wales

Bryne v *Kinematograph Renters Socy Ltd* [1958] 1 WLR 762
Hirani v *Hirani* [1983] 4 FLR 232.

Malawi

Chiduku v Chidano (1922) SR 55

Nigeria

Eleko v The Officer Administering the Government of Nigeria & Anor [1931] AC 662
lharazim and 10 Ors. v Sahid [1968-69] ALR SL 1 (SC)
Mariyamo v. *Sadiku Ejo* (1961) N.R.N.L.R 81.
Mojekwu v *Iwuchukwu* (2004) 11 NWLR (Pt 883) 196 (SC)
Oyewunmi v *Ogunsesan* [1990] 6 SCNJ 127 (SC)

South Africa

Azanian People's Organisation & Ors v *President, Republic of South Africa & Ors* [1996] SACLR LEXIS 20.

Zimbabwe

Magaya v *Magaya* (1999) (1) ZLR 100.

Regional

ACHPR

Amnesty Int'l & Ors v *Sudan* (1999) (15 November 1999)
Anuak Justice Council v *Ethiopia* [2006] ACHPR 69
Civil Liberties Organization v *Nigeria, African Commission on Human and Peoples' Rights* (2000) AHRLR 188 (ACHPR 1995).
Commission Nationale des Droits de l'Homme et des Libertés v *Chad, Comm.* (2000) AHRLR 66 (ACHPR 1995).
Endorois Welfare Council v *Kenya* (Comm. No. 276/2003), (4 February 2010)
Jawara v *The Gambia* (2000) AHRLR 107 (ACHPR 2000)

Malawi African Association & Ors. v *Mauritania* [2000] ACHPR 19 (11 May 2000)

ECOWAS
Keita v *Mali* (Judgment) ECCJ, ECW/CCJ/APP/05/06 (15 May 2006)
Koraou v *Niger* (ECCJ, ECW/CCJ/APP/08/08) (27 October 2008)
Manneh v *The Gambia* (2008) AHRLR 171 (ECOWAS).

European Union
Hashman & Anor v *United Kingdom* (2000) 30 EHRR 241
Steel & Ors v *UK* (1999) 28 EHRR 603

International
ECCC
ECCC Decision (Judgment) 002/02, 002/19-09-2007/ECCC/TC (16 November 2018)
ICJ
Advisory Opinion Concerning the Applicability of the Obligation to Arbitrate Under Section 21 of the United Nations Headquarters Agreement of 26 June 1947 (Order), (ICJ), 26 April 1988.
*The Ambatielos Claim (Greece, United Kingdom of Great Britain and Northern Ireland)*12 RIAA 83 (1956)
Applicability of the Obligation to Arbitrate under Section 21 of the UN Headquarters Agreement of 26 June 1947 (Advisory Opinion) (1988) 34 ICJ Rep.) 12
Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina* v *Serbia and Montenegro*) (Judgment) [2007] ICJ Rep 43
Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia* v *Serbia*) (Preliminary Objections, Judgment) [2008] ICJ Rep 412.
Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia* v *Russian Federation*) (Preliminary Objections, Judgment) [2011] ICJ Rep 70.
ICC
Prosecutor v *Katanga* (Judgment Pursuant to Article 74 of the Statute) ICC-01/04-01/07 (7 March 2014)
Prosecutor v *Katanga & Anor* (Decision on the Confirmation of Charges, ICC-01/04-01/07, (30 September 2008)
Situation in Uganda, Prosecutor v *Ongwen* (Decision on the Confirmation of Charges) ICC-02/04-01/15 (23 March 2016).
ICTR
Prosecutor v *Akayesu* (Judgment) ICTR-96-4-T (2 September 1998)

Prosecutor v *Muhimana* (Judgment and Sentence) ICTR-95-1B -T (28 April 2005) (Trial Chamber III)

ICTY

Prosecutor v *Blaskic* (Judgment) IT-95-14, (3 March 2000)
Prosecutor v *Delalic et. al*. (Judgment) IT-96-21-A (16 November 1998).
Prosecutor v *Furundžija* (Judgment) ICTY- IT-95-17/1-T (10 December 1998)
Prosecutor v *Kunarac et. al* (Foca case) (Judgment, Appeals Chamber) IT-96-23 and IT-96-23/1 (12 June 2002)
Prosecutor v *Kvocka e.t al.* (Judgment) IT-98-30-T (2 November 2001).
Prosecutor v *Tadic* (Judgment) IT-94-1 (11 November 1999)

SCSL

Prosecutor v *Brima & Ors* (Amended Consolidated Indictment) SCSL-04-16-0078 (13 May 2004)
Prosecutor v *Brima & Ors* (Appeal Judgment) SCSL-2004-16-A (22 February 2008)
Prosecutor v *Brima & Ors* (Indictment Annexes: Prosecutor's Memo to Accompany Indictment, Investigator's Statement, Draft Order Confirming Indictment) SCSL-03-06-I (7 March 2003)
Prosecutor v *Brima & Ors* (Prosecution Final Trial Brief) SCSL-04-16-T (6 December 2006)
Prosecutor v *Brima & Ors* (Public: Appeal Brief of the Prosecution) SCSL-04-16-A, (13 September 2007)
Prosecutor v *Brima & Ors* (Sentencing Judgement) SCSL-04-16-T (19 July 2007)
Prosecutor v *Brima & Ors* (Trial Judgement) SCSL-04-16-T (20 June 2007)
Prosecutor v *Fofana & Anor* (Appeal Judgment) SCSL-04-14-A (28 May 2008)
Prosecutor v *Fofana & Anor* (Trial Judgment) SCSL-04-14-T (9 October 2007)
Prosecutor v *Kamara* (Prosecutor's Memorandum to Accompany the Indictment) SCSL-03-10-PT (26 May 2003)
Prosecutor v *Kanu* (Indictment) SCSL-03-13-PT (15 September 2003).
Prosecutor v *Moinina & Anor* (Appeal Judgment) SCSL-04-14-A (May 28, 2008)
Prosecutor v *Sesay & Ors* (Appeal Judgment) SCSL-04-15-A (26 October 2009)
Prosecutor v *Sesay & Ors* (Request for Leave to Amend the Indictment) SCSL-05-14-PT (9 February 2004)
Prosecutor v *Sesay & Ors* (Trial Judgment) SCSL-04-15-T (2 March 2009)
Prosecutor v *Taylor* (Appeal Judgment) SCSL-03-01-A (26 Sept. 2013)
Prosecutor v *Taylor* (Indictment) SCSL-03-01-PT (29 May 2007)
Prosecutor v *Taylor* (Trial Judgment) SCSL-03-1-T (18 May 2012)

Table of Legislation

Sierra Leone

Child Rights Act 2007
Christian Marriage Act 1960
Civil Marriage Act 1960
Constitution of Sierra Leone 1991
Devolution of Estates Act 2007
Domestic Violence Act 2007
Interpretation Act 1971
Local Courts Act 1963
Local Courts Act 2011
Lomé Peace Agreement (Ratification) Act 1999
Malicious Damage Act 1861
Mohammedan Marriage Act 1960
Native Courts Ordinance 1933
Ordinance No. 3 1849
Prevention of Cruelty to Children Act 1926
Registration of Customary Marriage and Divorce Act 2009
Revolutionary United Front of Sierra Leone (Participation in Political and Democratic Process) Act 1999
Sexual Offences Act 2012
Sexual Offences (Amendment) Act 2019
Sierra Leone Truth and Reconciliation Commission Act 2000

Other Jurisdictions

Algeria

Penal Code 1966

Papua New Guinea

Constitution of the Independent State of Papua New Guinea, 1975

Nigeria

Native Courts Ordinance 1933

South Africa

Promotion of National Unity and Reconciliation Act 1995

United Kingdom

Family Law Act 1996
Forced Marriage (Civil Protection) Act 2007

Regional
Arab Charter on Human Rights 2004
African Charter on Human and Peoples' Rights 1981
African Charter on the Rights and Welfare of the Child 1999
Constitutive Act of the African Union 2001
Protocol of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union 2014
Protocol on the Statute of the African Court of Justice and Human Rights 2008
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003.
Revised Treaty of the Economic Community of West African States 1993
Treaty of the Economic Community of West African States 1975

Table of International Treaties and Conventions

Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone 2002.
The Brussels International Declaration of 1874 Concerning the Laws and Customs of War
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962
Convention on the Elimination of all Forms of Discrimination Against Women 1979
Convention on the Prevention and Punishment of the Crime of Genocide 1948
Convention on the Rights of the Child1989
Evian Accords between France and Algeria 1962
Instructions for the Government of Armies of the United States in the Field (1863 Lieber Code), 24 April 1863.
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention) 1949
Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention), 1949
Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention) 1949
Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) 1949.
Instructions for the Government of Armies of the United States in the Field (Lieber Code) 1863

International Covenant on Civil and Political Rights 1966
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1977
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 1977
Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1965
Rome Statute of the International Criminal Court 1998
Statute of the International Criminal Tribunal for Rwanda 1994
Statute of the International Criminal Tribunal for the former Yugoslavia 1993
Statute of the Special Court for Sierra Leone 2002
Treaty of Amity and Commerce between the Kingdom of Prussia and the United States of America 1785
Treaty of Peace with Turkey Signed at Lausanne 1923
Treaty of Sevres 1920
United Nations Charter 1945
Universal Declaration of Human Rights 1948
Vienna Convention on the Law of Treaties 1969

Table of other Primary Legal Sources

UN Resolutions

UNSC Res 1325(2000) (31 October 2000)
UNSC Res 1612 (2005) (26 July 2005)
UNSC Res 1820 (2008) (19 June 2008)
UNSC Res 1882 (2009) (4 August 2009)
UNSC Res 1888(2009) (30 September 2009)
UNSC Res 1889(2009) (5 October 2009)
UNSC Res 1960(2010 (16 December 2010)
UNSC Res2106(2013 (24 June 2013)
UNSC Res 2122(2013) (18 October 2013)
UNSC Res 2242(2015) (13 October 2015)
UNSC Res 2467(2019) (23 April 2019)
UNSC Res 2493(2019 (29 October 2019)

Subsidiary Legislation

AU Executive Council Rules of Procedure 2019
Interim Rules of the African Court on Human and Peoples' Rights 2008

Table of UN Documents

UN, Glossary on Sexual Exploitation and Abuse: Thematic Glossary of Current Terminology Related to Sexual Exploitation and Abuse (SEA) in the Context of the United Nations (UN 2016).

UN, Report of the Fourth World Conference on Women Beijing, 4-15 September 1995 (UN 1996)

UN Commission on Human Rights, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment [Rodley NS], (12 January 1995) E/CN.4/1995/34.

--, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences [Coomaraswamy R], in accordance with Commission on Human Rights Resolution 2000/45 (E/CN.4/2001/73) 2001.

---, World Conference on Human Rights (9 March 1994) E/CN.4/RES/1994/95.

UN Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 19: Violence against women, 1992.

---, Concluding Comments of the CEDAW Committee: Democratic Republic of the Congo (25 August 2006) CEDAW/C/COD/CO/5.

---, Concluding Comments, Sierra Leone, (11 June 2007) CEDAW/C/SLE/CO/5.

---, Concluding Observations on the 6th Periodic Report of Sierra Leone (10 March 2014) CEDAW/C/SLE/CO/6.

---, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined Fourth and Fifth Periodic Reports of States Parties: Burkina Faso (9 February 2004) CEDAW /C/BFA/4-5.

---, 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-Sierra Leone (14 December 2006) CEDAW/C/SLE/5.

---, Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined 4th, 5th, 6th and 7th Periodic Report of States Parties- Uganda (25 May 2009) CEDAW/C/UGA/7.

UN Committee on the Rights of the Child, Concluding Observations: Sierra Leone (24 February 2000) CRC/C/15/Add.116.

--, Consideration of Reports Submitted by States parties under Article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations: Sierra Leone (20 June 2008) CRC/C/SLE/CO/2.

--, Concluding Observations on the Combined Third to Fifth Periodic Reports of Sierra Leone (1 November 2016) CRC/C/SLE/CO/3-5.
--, Concluding Observations on Sierra Leone (14 October 2010) CRC/C/OPAC/SLE/CO/1.
UN Convention Against Torture, General Comment No. 2: Implementation of Article 2 by States Parties (24 January 2008) CAT/C/GC/2.
--, Report of the Committee on Torture, Concluding Observations on the Initial Report of Sierra Leone (20 June 2014) CAT/C/SLE/CO/1.
UN Economic and Social Council, ECA, Women in the Traditional African Societies (Workshop on Urban Problems: the Role of Women in Urban Development, Addis Ababa, 4-14 September, 1963)
---, Efforts to Eradicate Violence Against Women Within the Family and Society' (26 May 1988) ESCR 1988/27.
---, Report of the Secretary General [on] Forced Marriage of the Girl Child (5 December 2007) E/CN.6/2008/4
---, Violence Against Women in all its Forms (30 May 1991) 1991/18.
UN General Assembly, Declaration on the Elimination of Violence against Women (20 December 1993) A/RES/48/104.
----------------------------, Vienna Declaration and Programme of Action (12 July 1993) A/CONF.157/23.
UN Human Rights Committee, Concluding Observations on the Initial Report of Sierra Leone (25 March 2014) CCPR/C/SLE/CO/1.
UN Human Rights Council, Working Group on the Universal Periodic Review, National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council Resolution 5/1 Sierra Leone (14 February 2011) A/HRC/WG.6/11/SLE/1
----------------------------, Working Group on the Universal Periodic Review (Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the Annex to Human Rights Council Resolution 5/1): Sierra Leone (21 February 2011) A/HRC/WG.6/11/SLE/3.
-------------------------, Report of the Working Group on the Universal Periodic Review on Sierra Leone (11 July 2011) A/HRC/18/10.
----------------------------, Steiner M, Universal Periodic Review, The Follow-Up Program on Sierra Leone: Executive Summary (Submission of the International Center for Advocates Against Discrimination (18 November 2014).
----------------------------, Report of the Working Group on the Universal Periodic Review: Sierra Leone (14 April 2016) A/HRC/32/16.
----------------------------, Working Group on the Universal Periodic Review, Summary of Stakeholders' Submissions on Sierra Leone (25 February 2021) A/HRC/WG.6/38/SLE/3.

UN Peacekeeping, ‘Conflict Related Sexual Violence’ < https://peacekeeping.un.org/en/conflict-related-sexual-violence > accessed 28 August 2023.
UN Secretary General, Mainstreaming the Gender Perspective into all Policies and Programmes in the United Nations System: Report of the Secretary General (12 June 1997) E/1997/66.
UN Security Council, Letter dated 9 August 2000 from the Permanent Representative of Sierra Leone to the United Nations addressed to the President of the Security Council (10 August 2000) S/2000/786.
-------------------------, Report of the Secretary-General on Conflict-Related Sexual Violence (23 March 2018) S/2018/250.
------------------------, Report of the Secretary-General on Conflict-Related Sexual Violence
(30 March 2021) S/2021/312.
-------------------------, Report of the Secretary General on the Establishment of a Special Court for Sierra Leone (27 Sep 2000) S/2000/915.
-------------------------, Report of the Secretary General on UNOMSIL’, 30 July 1999 (S/1999/836)
UN Sustainable Development Goals, ‘Goal 5: Achieve Gender Equality and Empower all Women and Girls’< https://www.un.org/sustainabledevelopment/gender-equality/> accessed 19 September 2020.
UN Treaty Collection < https://treaties.un.org > accessed 23 December 2020
UN Women, Beijing Declaration and Platform for Action: Beijing+5 Political Declaration and Outcome (15 September 2005) A/CONF.177/20.
----------------, Division for the Advancement of Women, Department of Economic and Social Affairs, Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women – A Framework of Model Provisions (Expert Group Meeting, Ottawa, 10-13 November 2003) EGM/PEACE/2003/EP.5.
----------------, Reservations to CEDAW (UN Women 2000-2009) < https://www.un.org/womenwatch/daw/cedaw/reservations.htm#> accessed 23 December 2014.
UNICEF, Gender Equality: Glossary of Terms and Concepts (UNICEF 2017) <https://www.unicef.org/rosa/media/1761/file/Genderglossarytermsandconcepts.pdf > accessed 12 November 2019.
UNDP and MoPED, Barriers and Enablers of Women’s Participation in Revenue Generation in Sierra Leone (UNDP 2023).
UNFPA, Fighting Stigma Against Survivors of Conflict Related Sexual Violence Through Community Activism in Bosnia and Herzegovina 19 June 2018 < https://ba.unfpa.org/en/news/fighting-stigma-against-survivors-conflict-related-sexual-violence-through-community-activism> accessed 30 April 2021.

---------, My Body is My Own: Claiming the Right to Autonomy and Self-Determination' (UNFPA 2021) (UNFPA's 2021 State of the World Population Report).
Women, Peace and Security: Study submitted by the Secretary-General pursuant to Security Council Resolution 1325 (UN 2002)
Women's Caucus for Gender Justice, Recommendations and Commentary for December 1997 PrepCom on the Establishment of an International Criminal Court (UN 1997)
WomenWatch, World Conference to Review and Appraise the Achievements of the United Nations Decade for Women Nairobi, 1985: Nairobi Forward-Looking Strategies for the Advancement of Women < https://www.un.org/womenwatch/confer/nfls/ > accessed 12 July 2019.

Peace Agreements

Agreement between the Government of Sierra Leone and the Revolutionary United Front (Abuja Ceasefire Agreement) 10 November 2000
ECOWAS Six-Month Peace Plan for Sierra Leone (Conakry Accord) 23 October 1997.
Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (Abidjan Accord) 30 November 1996.
Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (Lomé Peace Agreement) 18 May 1999.

Bibliography of Secondary Sources

Articles

Abebe MA, ‘Climate Change, Gender Inequality and Migration in East Africa’ (2014-2015) 4 Wash. J. Envtl. L. & Pol’y 104

Abdullah I, ‘Bush Path to Destruction: The Origin and Character of the Revolutionary United Front (RUF/SL)’ (1997) XXII (3/4) Africa Development 45

Abdullahi U, RM Cusairi and SF Abdullah, ‘The Influence of Culture in Domestic Violence Against Women in Nigeria’ (2017) 2 JISED 273.

Adjetey NA, ‘Religious and Cultural Rights: Reclaiming the African Woman's Individuality: the Struggle between Women's Reproductive Autonomy and African Society and Culture’ (1995) 44 Am. U.L. Rev. 1351.

‘African Proverbs on Truth (17 Proverbs)’ < https://www.inspirationalstories.com/proverbs/t/african-on-truth/> accessed 19 June 2023.

African Proverbs Page < https://www.facebook.com/africanproverbspage/photos/a.886048424801949/5550165385056873/?type=3> accessed 12 November 2022.

Ainley K, R Friedman and C Mahony, ‘Transitional Justice Accountability and Peacebuilding in Post-Conflict Sierra Leone’ in Ainley K, R Friedman and C Mahony (eds), *Evaluating Transitional Justice Accountability and Peacebuilding in Post-Conflict Sierra Leone* (Palgrave Macmillan 2015) 2.

Akande D, ‘The Application of Human Rights Treaties in Wartime’ (EJIL: Talk!, 12 December 2008) <https://www.ejiltalk.org/the-application-of-human-rights-treaties-in-wartime/> accessed 1 September 2020.

Alcoff LM, ‘The Problem of Speaking for Others’ (1991) 20 Cultural Critique 5.

Allmand W, ‘The Vienna Declaration and Plan of Action: After Five Years’ (1998) 11 Rev. Quebecoise de Droit Int’l 119.

Allott AN, ‘The Changing Law in a Changing Africa.’ Sociologus (1961) 115.

Altunjan T, ‘The International Criminal Court and Sexual Violence: Between Aspirations and Reality’ (2021) 22 (5) German Law Journal 878.

An-Na’im AA, ‘Towards a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment of Punishment’ in An-Na’im AA (ed), *Human Rights in Cross-Cultural Perspectives: a Quest for Consensus* (Univ. of Pennsylvania 1995) 19.

Appiah-Nyamekye-Sanny J, ‘Sierra Leoneans say Health Care Hard to Access, Beset with Corruption - Especially for the Poor’ (Afrobarometer Dispatch No. 346, 2020)

Arnold DG, ‘Coercion and Moral Responsibility’ (2001) 38 Am.Phil.Q. 53.

Askin KD, Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles (2003) 21 Berkeley J. Int'l L. 288.
----------, 'Gender Crimes Jurisprudence in the ICTR: Positive Developments' 3 (2005) JICJ 1007.
Atuguba R, 'Customary Law Revivalism: Seven Phases in the Evolution of Customary Law in Sub-Saharan Africa' McGill J. of Int'l L. & Legal Pluralism <Customary Law Revivalism: Seven Phases in the Evolution of Customary Law in Sub-Saharan Africa - Inter Gentes> accessed 20 May 2022.
Bahlieda R, 'Chapter 1: The Legacy of Patriarchy.' Counterpoints 2015 (488)15.
Bangura Y, 'Strategic Policy Failure and Governance in Sierra Leone' (2000) 38(4) JMAS 551.
Bartlett TK, 'Feminist Legal Methods' (1990) 103 Harv. L. Rev. 829
Bass GJ, 'Bargaining Away Justice: India, Pakistan, and the International Politics of Impunity for the Bangladesh Genocide' (2016) 41(2) International Security 140.
Bayu EK, 'A Comparative Analysis on the Perspectives of African Feminism Vs Western Feminism: Philosophical Debate with their Criticism and its Implication for Women's Rights in Ethiopia Context' (2019) 11(4) International Journal of Sociology and Anthropology 54.
Bedont B and K Hall-Martinez, 'Ending Impunity for Gender Crimes Under The International Criminal Court' (1999) 6 Brown J. World Aff. 65.
Belair K, '"Unearthing the Customary Law Foundations 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(3) Columbia Journal of Gender and Law 551.
Bell C, C Campbell and F Ní Aoláin, 'Justice Discourses in Transition' (2004) 13 Social & Legal Studies 305.
Bell C and O'Rourke C, 'Does Feminism Need a Theory of Transitional Justice? An Introductory Essay' (2007) 1 (1) IJTJ 23.
Ben-Ari N and E Harsch, 'Sexual Violence, an 'Invisible War Crime': Sierra Leone Truth Commission Condemns Abuse, Discrimination (2005) Africa Renewal
Bennett TW, 'African Land- A History of Dispossession' in Zimmermann R and D Visser (eds), *Southern Cross: Civil Law and Common Law in South Africa* (Oxford 1996; online edn, Oxford Academic 2012) 72, < https://doi.org/10.1093/acprof:oso/9780198260875.003.0003> accessed 1 Feb. 2023.
Berewa S, 'Addressing Impunity using Divergent Approaches: The Truth and Reconciliation Commission and the Special Court' in Truth and Reconciliation in Sierra Leone a Compilation of Articles on the Sierra Leone Truth and Reconciliation Commission (UNAMSIL 2001)

Berger V, 'Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom' (1977) 77 Colum. L. Rev. 1.
Bhuptani PH and TL Messman-Moore, 'Blame and Shame in Sexual Assault' in W. T. O'Donohue and P. A. Schewe (eds), *Handbook of Sexual Assault and Sexual Assault Prevention* (Springer 2019) 313.
Bibler S and E Zuckerman, 'The Care Connection: The World Bank and Women's Unpaid Care Work in Select Sub-Saharan African Countries', No. 2013/131, (WIDER Working Paper 2013) 2.
Biegon J, 'The Rise and Rise of Political Backlash: African Union Executive Council's Decision to Review the Mandate and Working Methods of the African Commission' (EJIL: Talk!, 2 August 2018) < https://www.ejiltalk.org/the-rise-and-rise-of-political-backlash-african-union-executive-councils-decision-to-review-the-mandate-and-working-methods-of-the-african-commission/> accessed 12 December 2020.
Bond JE, 'Women's Rights, Customary Law, and the Promise of the Protocol on the Rights of Women in Africa' in Jeanmarie Fenrich et. al. (eds), *The Future of African Customary Law* (Cambridge UP 2011) 467.
Borchard E, 'The Relation between International Law and Municipal Law' (1940) 27 Va. L. Rev. 137.
Boserup E, 'Economic and Demographic Interrelationships in Sub-Saharan Africa' (1985) Population and Development Review 383.
Bowden JA and PJ Green, 'The Voice of the Researched in Qualitative Research' in Higgs J et. al. (eds.) *Researching Practice: A Discourse on Qualitative Methodologies* (Sense Pub. 2010) 123.
Brouwer A and L Ruiz, 'Male Victims and Female Perpetrators of Sexual Violence in Conflict' in S. Mouthaan and O. Jurasz (eds.), Gender and War: International and Transitional Justice Perspectives (Intersentia 2019) 169.
Bunting A, 'Forced Marriage in Conflict Situations: Researching and Prosecuting Old Harms and New Crimes' (2012) 1(1) Can. J. Hum. Rts. 165.
Bunting I, 'Lord's Resistance Army' *Encyclopaedia Britannica* (21 Jul. 2023)
Buss D, '"Foreword" in *Marriage by Force? Contestation Over Consent and Coercion in Africa* (Ohio UP 2016) ix.
Byrnes A, 'Using International Human Rights Law and Procedures to Advance Women's Rights' in Askin KD and DM Koenig (eds), *Women and International Human Rights* (Transnational Pub. 2000) 79.
Caldwell JC and P Caldwell, 'New Light on the Sub-Saharan African Fertility Transition: Conclusion' Samuel Agyei-Mensah and John B Casterline (eds), in *Reproduction and Social Context in Sub-Saharan Africa* (Greenwood P. 2003) 187.
Canan SN and MA Levand, 'A Feminist Perspective on Sexual Assault' in O'Donohue WT and PA Schewe (eds.), *Handbook of Sexual Assault and Sexual Assault Prevention* (Springer 2019) 3.

Cançado TAA, ‘The Application of the Rule of Exhaustion of Local Remedies in International Law’ in Bowett DW, (1983) 54 (1) British Yrbk Int’l L. 268.
----------------, ‘Exhaustion of Local Remedies in International Law and the Role of National Courts’ (1978) 17 (3/4) Archiv Des Völkerrechts 333.
Card C, ‘Rape as a Weapon of War’ (1996) 11(4) Hypatia 5.
Carton B, ‘”My Husband is No Husband to Me”: Divorce, Marriage and Gender Struggles in African Communities of Colonial Natal, 1869–1910.’ (2020) 46(6) Journal of Southern African Studies 1111.
Caulker J, ‘Fambul Tok: Reconciling Communities in Sierra Leone’ (2011) 23 Accord 52.
Cerrato J and E Cifre, ‘Gender Inequality in Household Chores and Work-Family Conflict’ (2018) 9 Front. Psychol. 1330.
Chandler R, EH Anstey and H Ross, ‘Listening to Voices and Visualizing Data in Qualitative Research: Hypermodal Dissemination Possibilities’ (2015) 5 SAGE Open 16.
Charlesworth H, ‘Feminist Methods in International Law’ (1999) 93 Am. J. Int’l L. 379
----------------------‘The Gender of International Institutions’ (1995) 89 ASIL Proceedings. 84
----------------------‘Human Rights as Men’s Rights’ in Peters J and P Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge 1995) 103.
----------------------‘The Public/Private Distinction and the Right to Development in International Law’ (1992) 12 Australian YearBook of International Law 190.
Charlesworth H, C Chinkin and S Wright, ‘Feminist Approaches to International Law’ (1991) 85 AJIL 613.
Chaung J, ‘Article 6’ in Marsha A. Freeman et. al. (eds), *The UN Convention on the Elimination of all Forms of Discrimination against Women: A Commentary* (OUP 2012)169.
Chinkin C and H Charlesworth, ‘Building Women into Peace: the International Legal Framework’ (2006) 27(5) Third World Quarterly 937.
Clark H, ‘A Fair Way to Go: Justice for Victim-Survivors of Sexual Violence’ in A. Powell et. al. (eds), *Rape Justice* (Palgrave Macmillan 2015) 18.
Clarke JM, ‘Forced Marriage: the Evolution of a New International Criminal Norm’ (2012) 3 ASLR 4
Cohen DK, ‘Explaining Rape during Civil War: Cross-National Evidence (1980–2009)’ (2013)107(3) APSR 461
------------‘Female Combatants and the Perpetration of Violence: Wartime Rape in the Sierra Leone Civil War’ (2013) 65(3) Wld.Pol. 383
Coker AL and DL Richter, ‘Violence Against Women in Sierra Leone: Frequency and Correlates of Intimate Partner Violence and Forced Sexual Intercourse’ (1998) 2 African Journal of Reproductive Health 61.

Conaghan J, 'Gendered Harms and the Law of Tort: Remedying (Sexual) Harassment' (1996) 16(3) OJLS 407.
---------------, 'Law, Harm and Redress: A Feminist Perspective' (2002) 22 Legal Stud 319.
---------------, 'Theorizing the Relationship Between Law and Gender' in Law and Gender (Clarendon Law Series) (Oxford UP 2013) 70.
Coomaraswamy R, 'Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women (2002) 34 Geo. Wash. Int'l L. Rev. 483.
-----------------------, 'Of Kali Bom: Violence and the Law in Sri Lanka' in M Schuler (ed), *Freedom from Violence: Women's Strategies from Around the World* (OEF International/UNIFEM 1992) 49.
Corno L and Voena A, 'Selling Daughters: Age of Marriage, Income Shocks and the Bride Price Tradition' (2016) No. W16/08. IFS Working Papers.
Coulter C, 'Female Fighters in the Sierra Leone War: Challenging the Assumptions?' (2008) 88(1) Feminist Review 54.
Davids T, F Van Driel and F Parren, 'Feminist Change Revisited: Gender Mainstreaming as Slow Revolution' (2014) 26 (3) Journal of International Development 396.
Davies JA and D Dagbanja, 'The Role and Future of Customary Tort Law in Ghana: A Cross-Cultural Perspective' (2009) 26 (2) Ariz J Int'l & Comp L 303
Davies PO, 'Marriage, Divorce, and Inheritance Laws in Sierra Leone and their Discriminatory Effects on Women' 12 (2005) Human Rights Brief 20
De Boeck AF and A Honwana, 'Introduction: Children and Youth in Africa' in Honwana A and F de Boeck (eds), *Makers & Breakers: Children and Youth in Postcolonial Africa* (James Currey, African World Press 2005) 1.
De Brouwer A, 'The Importance of Understanding Sexual Violence in Conflict for Investigation and Prosecution Purposes' (2015) 48 Cornell Int'l L. J. 639.
Delbrück J, 'The Exhaustion of Local Remedies Rule and the International Protection of Human Rights: A Plea for a Contextual Approach' in Jürgen Jekewitz et al. (eds), *Des Menschen Recht Zwischen Freiheit und Verantwortung* (Duncker & Humblot 1989) 213.
Demian M, 'On the Repugnance of Customary Law' (2014) 56(2) CSSH 508.
Demain M, 'On the Repugnance of Customary Law' (2014) 56(2) Comparative Studies in Society and History 508
Denney L and P Domingo, 'Local Transitional Justice: How Changes in Conflict, Political Settlements, and Institutional Development are Reshaping the Field' in Duthie R and P Seils (eds), *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies* (ICTJ 2017) 202.
Denov M and R Maclure, 'I Didn't Want to Die so I Joined them: Structuration and the Process of Becoming Boy Soldiers in Sierra Leone' (2006) 18 Terrorism and Political Violence 119

Dickson A and MD Mbosowo, 'African Proverbs about Women: Semantic Import and Impact in African Societies' (2014) 5(9) Mediterranean Journal of Social Sciences 632.
Diduck A and K O'Donovan, 'Feminism and Families: Plus ca change?' in Diduck A and K O'Donovan (eds.), *Feminist Perspectives on Family Law* (Routledge-Cavendish 2006) 1.
Donat PLN and J D'Emilio, 'A Feminist Redefinition of Rape and Sexual Assault: Historical Foundations and Change' (1992) 48(1) Journal of Social Issues 9
Dorjahn VR, 'Changes in Temne Polygyny.' (1988) 27 Ethnology 367.
---------------, 'The Marital Game, Divorce, and Divorce Frequency among the Temne of Sierra Leone' (1990) 63(4) Anthropological Quarterly 169.
Drakopoulou M, 'Feminism and Consent: a Genealogical Inquiry' in Hunter R and S Cowan (eds), *Choice and Consent: Feminist Engagements with Law and Subjectivity* (Routledge Cavendish 2007) 9.
Dyfan I, 'Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women' (7 November 2003) EGM/PEACE/2003/EP.
Eberts M, 'Feminist Perspectives on the Canadian Charter of Rights and Freedoms' in Philip Alston (ed), *Promoting Human Rights Through Bills of Rights: Comparative Perspectives* (Oxford UP 1999, rep. 2003) 241.
Edelenbos C, 'Human Rights Violations: A Duty to Prosecute?' (1994) 7 Leiden J. Int'l L. 5.
Elias TO, 'The Problem of Reducing Customary Laws to Writing' in Alison Dundes Renteln & Alan Dundes (eds.), *Folklaw: Essays in the Theory and Practice of Lex Non Scripta* (Garland Pub. 1994) 319.
England P, 'The Gender Revolution: Uneven and Stalled' (2010) 24(2) Gender & Society 149
Ferree MM, BB Hess and J Lorber, 'Introduction' in Myra Marx Ferree, Judith Lorber and Beth B. Hess (eds.), *Revisioning Gender* (Sage Pub. 1999) xv.
Fineman MA, and Zinsstag E, 'Introduction: Feminist Perspectives on Transitional Justice' in Martha Albertson Fineman and Estelle Zinsstag (eds), *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice* (Intersentia 2013) 1
Fellmeth AX, 'Feminism and International Law: Theory, Methodology, and Substantive Reform' (2000) 22 Hum. Rts. Q. 658.
Fenrich J, P Galizzi, TE Higgins, 'Introduction' in Fenrich J, P Galizzi, TE Higgins (eds), *The Future of African Customary Law* (Cambridge UP 2011) 1.
Fithen C and Richards P, 'Making War, Crafting Peace: Militia Solidarities and Demobilization in Sierra Leone' in Paul Richards (ed.), *No Peace, No War: An Anthropology of Contemporary Armed Conflicts* (James Currey 2005) 117.
Fortes M, 'Parenthood, Marriage and Fertility in West Africa' (1978) 14(4) Journal of Development Studies 121.

Fraser N, ‘Reframing Justice in a Globalizing World’ (2005) 36 New Left Review 69.
Fraser N and H Marek, ‘Towards Global Justice: An Interview with Nancy Fraser’ (2004) 40(6) Czech Sociological Review 879.
Frulli M, ‘Advancing International Criminal Law: The Special Court for Sierra Leone Recognizes Forced Marriage as a “New” Crime Against Humanity’ (2008) 6 (5) JICJ 1033
Gallagher A, ‘Ending the Marginalization: Strategies for Incorporating Women into the United Nations Human Rights System’ (1997) 19 Hum.Rts.Q. 283.
Gangoli G, K Chantler and M Hester, ‘Understanding Forced Marriage: Definitions and Realities’ in Gill AK and S Anitha (eds), *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (2011) 25
Gardam J, ‘Women and the Law of Armed Conflict: Why the Silence?’ (1997) 16 International and Comparative Law Quarterly 55.
Gekker E, ‘Rape, Sexual Slavery, and Forced Marriage at the International Criminal Court: How Katanga Utilizes a Ten-Year Old Rule but Overlooks New Jurisprudence’ (2004) 25 Hastings Women L. J. 105.
Gong-Gershowitz J, ‘Forced Marriage: A “New” Crime Against Humanity?’ (2009) 8 Nw U J Int’l Hum Rts 53.
Goodfellow NA, ‘The Miscategorization of “Forced Marriage” as a Crime against Humanity by the Special Court for Sierra Leone’ (2011) 11(5) Int.C.L.R 857.
Gottschall J, ‘Explaining Wartime Rape’ (2004) 41(2) Journal of Sexual Research 1
Govier T and W Verwoerd, ‘Forgiveness: The Victim’s Prerogative’ (2002) 21 South African Journal of Philosophy 97.
Gready P and S Robins, ‘From Transitional to Transformative Justice: a New Agenda For Practice’ (2014) 8 IJTJ 339.
Gyan C, Abbey E and Baffoe M, ‘Proverbs and Patriarchy: Analysis of Linguistic Prejudice and Representation of Women in Traditional Akan Communities of Ghana’ (2020) 9(3) Soc. Sci. 1.
Hackett RIJ, ‘Women in African Religions’ in Arvind Sharma (ed.) Religion and Women (State University of New York 1994) 63.
Haenen I, ‘Forced Marriages in Conflict Situations’ in Forced Marriage: the Criminalisation of Forced Marriage in Dutch, English and International Criminal Law (Intersentia 2014) 65
Harrell-Bond B, ‘”Native” and “Non-Native” in Sierra Leone Law’ West Africa Series (1977) XVIII (1) (Sierra Leone)
Hayes C, ‘Tackling Violence Against Women: a Worldwide Approach’ in Geraldine T and J Hoare (eds.), *Gender-Based Violence* (Oxfam 2007) 1.
Hearn J, ‘A Multi-Faceted Power Analysis of Men’s Violence to Known Women: From Hegemonic Masculinity to the Hegemony of Men’ (2012) 60(4) Sociological Review 589.

Hedlund G, ‘Women’s Interests in Local Politics’ in Kathleen B. Jones and Anna G. Jónasdóttir (eds.), *The Political Interests of Gender Revisited: Developing Theory and Research with a Feminist Face* (Sage Pub. 1985) 101.

Higgins TE, ‘Anti-Essentialism, Relativism and Human Rights’ (1996) 19 Harv Women’s L. J. 89.

Holleman JF, ‘An Anthropological Approach to Bantu Law (With Special Reference to Shona Law)’ (1950) 10 Rhodes-Livingstone J. 51.

Hunnicutt G, ‘Varieties of Patriarchy and Violence Against Women: Resurrecting “Patriarchy” as a Theoretical Tool’ (2009) 15(5) Violence Against Women 553.

Hunter R, ‘Consent in Violent Relationships’ in Hunter R and S Cowan, (eds.), *Choice and Consent : Feminist Engagements with Law and Subjectivity* (Routledge-Cavendish 2007) 158.

Hussain B and AZ Asad, ‘A Critique on Feminist Research Methodology’ (2012) 5 (4) JL& Pol 202.

Ibidapo-Obe A, ‘The Dilemma of African Criminal Law: Tradition versus Modernity’ (1992) 19 S.U.L. Rev. 327.

Ibru A, (Speech at the 4th Guardian Annual Lecture, Lagos, July 1993).

Idumwonyi IM and OO Eduviere, ‘Women and African Traditional Religion’ in Olajumoke Yacob-Haliso and Toyin Falola (eds.), *The Palgrave Handbook of African Women’s Studies* (Palgrave Macmillan 2021) 2169.

‘Igbo Proverbs and Meanings (Group 2)’ < https://franpritchett.com/00fwp/igbo/proverbs/072_083.html > accessed 12 December 2022.

International Commission of Jurists, ‘Withdrawal of States from African Court a Blow to Access to Justice in the Region’ (1 May 2020) < https://www.icj.org/withdrawal-of-states-from-african-court-a-blow-to-access-to-justice-in-the-region/ > accessed 12 November 2020.

Iron R, ‘Ending The Sierra Leone War.’ in Damien Kingsbury & Richard Iron (eds*.), How Wars End: Theory and Practice* (Routledge 2023) 89.

Jackson S, ‘Gender and Heterosexuality: a Materialist Feminist Analysis.’ 2003 HeteroSexual Politics 11.

Jackson S, ‘Theorizing Gender and Sexuality’ in Jackson S and J Jones (eds), *Contemporary Feminist Theories* (Edinburgh UP 1999) 131.

Jacobs RP, ‘Married by the Revolution: Forced Marriage as a Strategy of Control in Khmer Rouge Cambodia’ (2022) 24(3) Journal of Genocide Research 357.

Jain N, ‘Forced Marriage as a Crime against Humanity: Problems of Definition and Prosecution’ (2008) 6(5) J Int Criminal Justice 1013.

Jalloh C, ‘Forced Marriage as a Crime Against Humanity’ in *The Legal Legacy of the Special Court for Sierra Leone* (Cambridge UP 2020) 150.

Jalloh I, 'Analyzing Bush Wife Phenomenon at the Special Court Trials' 3 < http://www.carl-sl.org/home/articles/92-ibrahim-jalloh?format=pdf > accessed 12 September 2016.
Johnson-Odim C, 'Common Themes, Different Context' in C. Mohanty, A. Russo, and L. Torres (eds), *Third World Women and the Politics of Feminism* (Indiana UP 1991) 314.
Joko Smart HM, 'The Place of Islamic Law within the Framework of the Sierra Leone Legal System' (1980) J Legal Plur 87
Kaboré A, 'Differentiating African and Western Feminisms through Room Symbolism' (2017) 5(6) Linguistics and Literature Studies 408
Kaindaneh S et. al., 'Remembering the Past and Reconciling for the Future: The Role of Indigenous Commemorative Practices in Sierra Leone.' in Darweish M and C Rank *Peacebuilding and Reconciliation: Contemporary Themes and Challenges* (Pluto Press 2012) 72.
Kalajdzic J, 'Rape, Representation, and Rights: Permeating International Law with the Voices of Women' 21 (1996) Queens Law Journal 457.
Kalra MS, 'Forced Marriage: Rwanda's Secret Revealed' (2001) 7 U C Davis J Int'l L & Pol'y 197
Kamara JF, 'Preserving the Legacy of the Special Court for Sierra Leone: Challenges and Lessons Learned in Prosecuting Grave Crimes in Sierra Leone' (2009) 22 LJIL 762.
Kane M, J Oloka-Onyango and A Tejan-Cole, 'Reassessing Customary Law Systems as a Vehicle for Providing Equitable Access to Justice for the Poor' (World Bank Conference on 'New Frontiers of Social Policy', Arusha, 12-15 December 2005).
Kapur R, 'The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International Post-Colonial Feminist Politics' (2002) 15 Harv. Hum. Rts. J. 1.
Kartar-Hyett L, 'Simply Unwilling: Is Patriarchy Preventing the Prosecution of Crimes against Women in African States: A Kenyan and Ugandan Perspective' (2016) 24 African Journal International and Comparative Law 175.
Kaufman NH and S Lindquist, 'Critiquing Gender-Neutral Treaty Language: the Convention on the Elimination of All Forms of Discrimination Against Women', in Peters J and A Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge, 1995) 114.
Kelsall T, 'Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone' (2005) 27 Hum.Rts.Q. 361.
------------, 'Politics, Anti-Politics, International Justice: Language and Power in the Special Court for Sierra Leone' (2006) 32 Rev.Int'l Stud.587.
Kennelly I, SN Merz and J Lorber, 'What Is Gender?' (2001) Am.Soc.Rev. 598.
Kerr VM, 'Should Forced Marriages be Categorised as 'Sexual Slavery' or 'Other Inhumane Acts' in International Criminal Law?' (2020) 35 (1) UJIEL 1

Kilson M, ‘Modern Colonialism and British Rule in Sierra Leone, 1896 1937’ in Political Change in a West African State: A Study of the Modernization Process in Sierra Leone (Harvard UP 1966) 11.
Kludze AKP, ‘Evolution of the Different Regimes of Customary Law in Ghana Within the Framework of the Principle of stare decisis’ in Anthony Allott and Gordon R. Woodman (eds), *People's Law and State Law. The Bellagio Papers* (Foris Pub. 1985) 97.
Komarovsky M, ‘Cultural Contradictions and Sex Roles (1946) 52 Am J Soc 184.
--------------------, ‘The Concept of Social Role Revisited’ (1992) 6(2) Gender and Society 301.
Krause HD, ‘Legal Position: Unmarried Couples’ (1986) 34 Am. J. Comp. L. Supp. 533.
Lam MC, ‘Feeling Foreign in Feminism’ (1994) 19 Signs: Journal of Women Culture 865.
Liles M, ‘150 of the Best African Proverbs About Life, Love and Family That Are Full of Poetic Wisdom’ (Parade, 4 May 2021) <https://parade.com/1100530/marynliles/african-proverbs/> accessed 7 May 2021.
Lincoln J, ‘Nullum Crimen Sine Lege in International Criminal Tribunal Jurisprudence: The Problem of the Residual Category of Crime’ (2011) 7(1) Eyes on the ICC 137
Lisk IEP and BL Williams, ‘Marriage and Divorce Regulation and Recognition in Sierra Leone.’ (1995) 29 Fam.L.Q. 655.
Little KL, ‘The Changing Position of Women in the Sierra Leone Protectorate’ (1948) 18(1) Africa 1.
Lopata HZ and B Thorne, ‘On the Term “Sex Roles.”’ (1978) 3 Signs: Journal of Women in Culture and Society 718.
Luo T, ‘“Marrying My Rapist?!” The Cultural Trauma Among Chinese Rape Survivors.’ (2000) 14(4) Gender & Society 581.
McAuliffe P, ‘Romanticization Versus Integration?: Indigenous Justice in Rule of Law Reconstruction and Transitional Justice Discourse’ (2013) 5(1) Goettingen J. Int’l L. 41.
MacCormack C, ‘Mende and Sherbro Women in High Office’ (1972) 6 Can.J.Afr.Stud. 151.
McFerson HM, ‘Women and Post-conflict Society in Sierra Leone’ (2012 13(1) Journal of International Women’s Studies 46
MacKenzie M, ‘Securitization and Desecuritization: Female Soldiers and the Reconstruction of Women in Post-Conflict Sierra Leone’ (2009) 18(2) Security Studies 241
-------------------and Sesay M, ‘No Amnesty from/for the International: The Production and Promotion of TRCs as an International Norm in Sierra Leone’ (2012) 13 International Studies Perspectives 146.

MacKinnon C, ‘Feminism, Marxism, Method and the State: Towards Feminist Jurisprudence’ (1983) 8(4) Signs 635.
-------------------------- ‘Rape, Genocide, and Women's Human Rights’ (1994) 17 Harv. Women's L. J. 5.
--------------------‘Sex and Violence: A Perspective’, in Hackett E and S Haslanger (eds.), *Theorizing Feminisms: A Reader* (OUP 2006) 266.
-------------------- ‘Sexual Harassment: Its First Decade in Court’ in *Feminism Unmodified: Discourses on Life and Law* (Harvard UP 1987) ???

McPhail BA, ‘Feminist Framework Plus: Knitting feminist theories of rape etiology into a com prehensive model. (2016) 17(3) Trauma, Violence, & Abuse 314.
McQuigg RJA, ‘Is it Time for a UN Treaty on Violence against Women?’ (2018) 22(3) IJHR 305.
McWilliams M and F Ní Aoláin, “‘There is a War Going on You Know’: Addressing the Complexity of Violence Against Women in Conflicted and Post Conflict Societies” (2013) 1(2) Transitional Justice Review 1.
Madlingozi T, ‘On Transitional Justice Entrepreneurs and the Production of Victims’ in Doris Buss et. al. (eds), *Sexual Violence in Conflict and Post-Conflict Societies: International Agendas and African Contexts* (Routledge 2014) 169.
Mahony C and Y Sooka, ‘The Truth about the Truth: Insider Reflections on the Sierra Leonean Truth and Reconciliation Commission’ in K Ainley, R Friedman and C Mahony (eds*), Evaluating Transitional Justice Accountability and Peacebuilding in Post-Conflict Sierra Leone* (Palgrave Macmillan 2015) 35.
Mahoney K, ‘Theoretical Perspectives on Women’s Human Rights and Strategies for their Implementation’ (1996) 12 Brooklyn International Law 799.
Manjoo R, ‘Accountability and Impunity: Developments and Challenges in Realizing Justice for Women Victims of Violence’ (2020) 2(2) International Review of Contemporary Law 5.
Mansaray B, ‘Women Against Weapons: a Leading Role for Women in Disarmament’ in Ayissi A and RE Poulton (eds.), *Bound to Cooperate: Conflict, Peace and People in Sierra Leone* (UN Institute for Disarmament Research 2000) 139.
Mansaray G, Unpublished Survey of the Bush wives of Sierra Leone, June 2021.
Mantt J, ‘Working Politically: Combining Socio-Legal Tools to Study Experiences of Law’ (2020) 21 German J. L. 1464.
Mayer AE, ‘Cultural Particularism as a Bar to Women’s Rights: Reflections on the Middle Eastern Experience’ in Julie Peters and P. Wolper (eds), *Women’s Rights, Human Rights: International Feminist Perspectives* (Routledge 1995) 176.

Mehra B, 'Bias in Qualitative Research: Voices from an Online Classroom' (2002) 7 The Qualitative Report 1.
Menjívar C and SD Walsh, 'Subverting Justice: Socio-legal Determinants of Impunity for Violence against Women in Guatemala' (2016) 5(3) Laws 31.
Meron T, 'Rape as a Crime Under International Humanitarian Law' (1993) 87 AJIL 424.
Mertus J, 'State Discriminatory Family Law and Customary Abuses' in Julie Peters and P. Wolper (eds), *Women's Rights, Human Rights: International Feminist Perspectives* (Routledge 1995) 135.
Mgbako C and KS Baehr, 'Engaging Legal Dualism: Paralegal Organizations and Customary Law in Sierra Leone and Liberia' in *The Future of African Customary Law* (CUP 2012) 170
Millar G, 'Local Evaluations of Justice through Truth Telling in Sierra Leone: Postwar Needs and Transitional Justice' (2011) 12 Human Rights Review 515.
Minority Rights Group, 'Guidance: Exhausting domestic remedies under the African Charter on Human and Peoples' Rights' 21 April 2016 <https://minorityrights.org/> accessed 10 September 2020.
Mohanty CT, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' (1988) 30 Feminist Review 61.
------------------'Under the Western Eyes: Revisiting Feminist Solidarity through Anti-Capitalist Struggles' (2003) 28 Signs and Journal of Women Culture Society 499.
Moore J, 'In Africa, Justice For 'Bush wives'" Christian Science Monitor (10 June 2008)
Moszynski P, 'Teenage Rape Victim is Stoned to Death as Violence Sweeps Somalia' (2008) BMJ 337.
Mudgway C, 'Can International Human Rights Law Smash the Patriarchy? A Review of 'Patriarchy' According to United Nations Treaty Bodies and Special Procedures' (2021) 29 Fem.L.S 67.
---------------- 'Smashing the patriarchy: Why International Law Should Be Doing More'< https://blogs.lse.ac.uk/wps/2019/10/07/ > accessed 2 November 2020.
Murithi T, 'Advancing Transitional Justice in Post-conflict Societies in Africa' (2018) 5(3) African Journal of Democracy and Governance 103.
Mutua M, 'Savage Victims and Saviours: The Metaphor of Human Rights' (2001) Harv.Int'l L.J. 201.
Nagy R, 'Violence, Amnesty and Transitional Law: "Private" Acts and "Public" Truth in South Africa' (2004) 1(1) African Journal of Legal Studies 1.
Namulundah F, 'Bukusu (Kenya) Folktales' (2013) 15 (3) International Feminist Journal of Politics 378.
Nelson BD et al., 'Impact of sexual violence on children in the Eastern Democratic Republic of Congo' (2011) 27(4) Medicine, Conflict and Survival 211.

Nesiah V, 'Toward a Feminist Internationality: a Critique of U.S. Feminist Legal Scholarship' (1993) 16 Harv Women's L. J. 192.
Ngugen F, 'Untangling Sex, Marriage and Other Criminalities in Forced Marriage' (2014) 6 Goettingen J. Int'l L. 13
Ní Aoláin FD, 'Advancing Women's Rights in Conflict and Post-Conflict Situations.' (2010) 104 Proceedings of ASIL Annual Meeting 568.
Ní Aoláin F, 'Exploring a Feminist Theory of Harm in the Context of Conflicted and Post Conflict Societies' (2009) Queens Law Journal 219
Ní Aoláin F and C Turner, 'Gender, Truth and Transition' (2007) 16 UCLA Women's Law Journal 229.
Nmehielle VO, 'Development of the African Human Rights System in the Last Decade' (2004) 11(3) Human Rights Brief 6.
Noor AM, 'A Victim's Claim of Being Raped is Neither a Confession to Zina nor Committing Qadhf (Making False Accusation of Zina).' (2011) 8 (1) Muslim World Journal of Human Rights 1.
Nowrojee B, 'Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims' (2005) 18 Harv. Rts. J. 85.
Nwapa F, 'Women and Creative Writing in Africa' in T Olaniyan and A Quayson (eds.), *African Literature: An Anthology of Criticism and Theory* (Blackwell 2011) 526.
Nyman-Metcalf K and I Papageorgiou, 'Why Should We Obey You? Enhancing Implementation of Rulings by Regional Courts.' in *African Human Rights Yearbook* (Pretoria University Law Press 2017) 167.
Nzegwu N, 'Gender Equality in a Dual–Sex system: The Case of Onitsha' (1994) Jenda: A Journal of Culture and African Women Studies 73.
OAU/AU Treaties, Conventions, Protocols & Charters < https://au.int/treaties > accessed 12 November 2019.
Obaid TA, 'United Nations Agencies - Forward Together in the Response to Violence against Women' (2010) 47 U.N. Chron. 9.
O'Hare UA, 'Realizing Human Rights for Women' (1999) 21 Hum.Rts.Q. 364.
Okolie-Osemene J, 'Sierra Leone: Mapping the Disarmament, Demobilisation, Remobilisation and Reintegration of Ex-Combatants. Prospects for Sustainable Peace' (2021) 34 Peace Conflict Studies Quarterly 20.
Okome O, 'What Women, Whose Development' in O Oyewumi, *African Women and Feminism: Reflecting on the Politics of Sisterhood* (Africa World Press 2003) 71.
Oloka-Oyango J and S Tamale, 'The Personal is Political or Why Women's Rights are Indeed Human Rights: African Perspectives on International Feminism' (1995) 17 Hum.Rts.Q. 691.
Oosterveld V, '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.

-----------------, 'Forced Marriage and the Special Court for Sierra Leone: Legal Advances and Conceptual Difficulties' (2011) 2 J. Int'l Human. Legal Stud. 127.
-----------------, 'The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments' [2011] 44 Cornell Int'l L. J. 50.
-----------------, 'International Criminal Justice, Politics and the Special Court for Sierra Leone' (2008) 102 Proceedings of the Annual Meeting (ASIL) 19.
-----------------, 'The Making of a Gender-Sensitive International Criminal Court' (1999) 1 Int'l L. F. Du Droit Int'l 38.
-----------------, 'Prosecuting Sexual Violence at the Special Court for Sierra Leone' (IntLawGrrls, 18 December 2017) < https://ilg2.org/2017/12/18/prosecuting-sexual-violence-at-the-special-court-for-sierra-leone/ > accessed 29 September 2023.
-----------------, 'The Special Court for Sierra Leone, Child Soldiers, and Forced Marriage: Providing Clarity or Confusion?' (2008) 45 Can. Y.B. Int'l L. 131.
-----------------, The Special Court for Sierra Leone's Consideration of Gender-based Violence: Contributing to Transitional Justice? (2009) 10 Hum. Rts. Rev. 73
Oosterveld V and A Marlowe, 'Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara & Santigie Borbor Kanu; Prosecutor v. Moinina Fofana & Allieu Kondewa' (2007) 101 Am. J. Int'L L. 848.
Orentlicher DF, 'Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime' (1991) 100 Yale L.J. 2537.
Orford A, 'Commissioning the Truth' (2006) 15 Colum.J.Gender & L. 851.
Osiel M, 'Making Sense of Mass Atrocity' (2010) 26 Journal of Law and Religion 411.
O'Sullivan C, 'Dying for the Bonds of Marriage: Forced Marriages as a Weapon of Genocide' (2011) 22(2) Hastings Women's Law Journal 271.
Pace W and J Schense, 'The Coalition of the International Criminal Court at the Preparatory Commission' in Lee RS (ed), *The International Criminal Court, vol. 2: Elements of Crimes and Rules of Procedure and Evidence* (Cambridge UP 2000) 705.
Page H, 'Childrearing versus Childbearing: Co-residence of Mother and Child in Sub-Saharan Africa' in Ron J. Lesthaeghe (ed.), *Reproduction and Social Organization in Sub-Saharan Africa* (Univ. of California P. 1989) 401
Palmer A, 'An Evolutionary Analysis of Gender-Based War Crimes and the Continued Domestic Violence of "Forced Marriage"' (2009) 7 Nw U J Int'l Hum Rts 133.
Park ASJ, 'Other Inhumane Acts': Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone' (2006) 15 Social and Legal Studies 315
Parnami K, 'Concept of Justice: Difficulties in Defining Justice' [2019] 2(5) International Journal of Law, Management and Humanities 1.

PeaceWomen, 'Sierra Leone: Apology to Women Victims a Welcome Step' (Sierra Express Media, 2010)
Perilloux C, JD Duntley, and DM Buss, 'The Costs of Rape' (2012) 41 Archives of Sexual Behavior 1099.
Peters A, 'Supremacy Lost: International Law Meets Domestic Constitutional Law' (2009) 3 Vienna Online J on Int'l Const L 170
Pinterest, < heartfeltquotes.blogspot.com > accessed 21 October 2022.
Portilla JC, 'A Forgiveness Law: The Path to Solve the Peace Versus Justice Dilemma' 35 (2015) B.C.J.L. & Soc. Just. 193.
Rainbo Initiative, 'What We Do' < https://rainboinitiativesl.org/advocacy-policy-influence/ > accessed 18 May 2023
Rapp SJ, 'The Compact Model in International Criminal Justice: The Special Court for Sierra Leone' (2008) 57 Drake L. Rev. 11.
'Redbubble' < https://www.redbubble.com/i/poster/African-Proverbs-Truth-is-the-first-victim-of-war-by-AfricanProverbs/123507918.LVTDI# > accessed 19 June 2012.
Reilly N, 'Seeking Gender Justice in Post-Conflict Transitions: Towards a Transformative Women's Human Rights Approach' (2007) 3 Int. J.L.C. 155.
Renton J, 'Family: Age of Consent?' (2009) 159 NLJ 1347.
Rennison CM, 'Feminist Theory in the Context of Sexual Violence' in G. Bruinsma & D. Weisburd (eds.), *Encyclopaedia of Criminology and Criminal Justice* (Springer 2018) 1617
Rentz C, 'Cold Justice. 'Who Is This Monster?' ProPublica 20 May 2021, < https://www.propublica.org/article/who-is-this-monster> accessed 20 May 2022.
Richards P, 'To Fight or to Farm? Agrarian Dimensions of the Mano River Conflicts (Liberia and Sierra Leone)' (2005) 104 African Affairs 571
Richards P, K Bah and J Vincent, 'Social Capital and Survival: Prospects for Community-driven Development in Post-conflict Sierra Leone' Social development papers. Conflict Prevention and Reconstruction Series; No. CPR 12 (World Bank Group 2004) 1.
'Right to Marry Person of One's Choice is Integral to Right to Life & Liberty: SC on Hadiya case' The Indian Express (India, 27 July 2020) 1.
Ristov A, 'The New Challenges in Regulation of Marriage and Non-Marital Union' (2014) Harmonius: Journal of Legal and Social Studies in South East Europe 300.
Rodley NS, 'Can Armed Opposition Groups Violate Human Rights?' in Mahoney P and K Mahoney (eds.) *Human Rights in the 21st Century: A Global Challenge* (Martinus Nijhoff 1993) 297
Roht-Arriaza N, 'State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law' (1990) 78 Cal. L. Rev. 451.
Sanin K, 'Special Court Monitoring Program Update #57 Trial Chamber II - AFRC Trial' (U.C. Berkeley 2005) 1.

Sankey D, 'Gendered Experiences of Subsistence Harms: A Possible Contribution to Feminist Discourse on Gendered Harm?' (2014) 24(1) Social & Legal Studies 25.
Schabas W, 'The Sierra Leone Truth and Reconciliation Commission' in N. Roht-Arriaza and J. Mariezcurrena (eds), *Transitional Justice in the 21st Century* (Cambridge UP 2006) 25.
---------------, 'The Special Court for Sierra Leone: Testing the Waters: Conjoined Twins of Transitional Justice?' (2004) 2 JICJ 1082.
Scharf MP and S Mattler, 'Forced Marriage: Exploring the Viability of the Special Court for Sierra Leone's New Crime Against Humanity.' Case Legal Studies Research Paper No. 05-35 (2005) African Perspectives on International Criminal Justice, 1, 2 < https://ssrn.com/abstract=824291> accessed 17 August 2015.
Schulz P and A Kreft, 'Accountability for Conflict-Related Sexual Violence' (24 February 2022) < https://doi.org/10.1093/acrefore/9780190846626.013.702> accessed 12 September 2023
Seguino S, 'Plus Ça Change? Evidence on Global Trends in Gender Norms and Stereotypes' (2007) 13(2) Feminist Economics 1.
Sesay SM et. al, 'Sierra Leone' in *Britannica Encyclopedia* (Updated 2023) < https://www.britannica.com/place/Sierra-Leone> accessed 14 July 2023.
Sevilla-Sanz A, Gimenez-Nadal JI, and Fernández C, 'Gender Roles and the Division of Unpaid Work in Spanish Households.' (2010) 16(4) Feminist Economics 137.
'Sexual Violence Patterns, Causes, and Possible Solutions' (An Interview with Kudakwashe Chitsike, Research and Advocacy Unit, Zimbabwe, and Jessica Nkuuhe, Independent Consultant, Uganda) 43, in Buss D et. al. (eds) *Sexual Violence in Conflict and Post-Conflict Societies: International Agendas and African Contexts* (Routledge 2014) 43.
Shaw R, 'Linking Justice with Reintegration? Ex-Combatants and the Sierra Leone Experiment' in Shaw R, L Waldorf and P Hazan (eds), *Localizing Transitional Justice: Interventions and Priorities After Mass Violence* (Stanford UP 2010) 111.
Shaw R and L Waldorf, 'Introduction: Localizing Transitional Justice' in Shaw R, L Waldorf and P Hazan (eds), *Localizing Transitional Justice: Interventions and Priorities After Mass Violence* (Stanford UP 2010) 3.
Shelley C, 'Beating Children Is Wrong, Isn't It? Resolving Conflicts in the Encounter Between Religious Worldviews and Child Protection' (2013) 15 Ecc LJ 130.
Singh S, 'From Global North-South Divide to Sustainability: Shifting Policy Frameworks for International Development and Education' (2020) 9(1) International and Multidisciplinary Journal of Social Sciences 76.

Smith DJ, ‘Romance, Parenthood, and Gender in a Modern African Society’ (2001) 40 Ethnology 129.
Special Court for Sierra Leone, ‘Prosecutor Welcomes Arraignment of RUF and AFRC Indictees on Charges Related to Forced Marriage’ (2004) <http://www.rscsl.org/Documents/Press/OTP/prosecutor-051704.pdf> accessed 15 September 2015
Stark L, ‘Cleansing the Wounds of War: an Examination of Traditional Healing, Psychosocial Health and Reintegration in Sierra Leone’ (2006) 4(3) Intervention 206.
Steinbock B, ‘Coercion and Long-Term Contraceptives’ Hastings Center Report (1995) 25 (1) S19.
Stovel L, ‘”There’s no Bad Bush to Throw Away a Bad Child”: “Tradition” – Inspired Reintegration in Post-War Sierra Leone’ (2008) 46(2) JMAS 305.
Tamale S, ‘The Right to Culture and the Culture of Rights: a Critical Perspective on Women’s Sexual Rights in Africa’ (2008) 16 Fem Leg Stud 47
Tejan-Cole A, ‘Painful Peace: Lomé Peace Agreement in Sierra Leone’ (1999) 3(2) Law, Democracy & Development 239.
Theidon K, ‘Gender in Transition: Common Sense, Women and War’ (2007) 6 Journal of Human Rights 458.
Thompson DO, African Proverbs Page < https://www.facebook.com/africanproverbspage/posts/african-proverb-home-is-not-where-we-live-home-is-where-we-belongmeaning-in-nige/5485196188220460/> accessed 5 May 2020.
Thompson RB and E Erez, ‘Wife Abuse in Sierra Leone: Polygamous Marriages in a Dual Legal System’ (1994) 18 Int’l J.Comp.& Applied Crim.Just. 29.
Tickner AJ, ‘Hans Morgenthau’s Principles of Political Realism: a Feminist Reformulation’ in Rebecca Grant and Kathleen Newland (eds), *Gender and International Relations* (Indiana UP 1991)
Tonsing JC and KN Tonsing, ‘Understanding the Role of Patriarchal Ideology in Intimate Partner Violence among South Asian Women in Hong Kong’ (2019) 62(1) International Social Work 161.
Toope SJ, ‘Does International Law Impose a Duty upon the United Nations to Prevent Genocide?’ (2000) 46 Mcgill L. J. 187.
Torrey M, ‘When Will We Be Believed - Rape Myths and the Idea of a Fair Trial in Rape Prosecutions’ (1991) 24 U.C. Davis L. Rev. 1013
Toy-Cronin BA, ‘What Is Forced Marriage-Towards a Definition of Forced Marriage as a Crime against Humanity’ (2010) 19 Colum. J. Gender & L. 539.
Turcotte L, ‘Foreword’ in Monique Wittig, *The Straight Mind and Other Essays (*Beacon Press 1992) xi.
Twinomugisha BK, ‘African Customary and Women’s Human Rights in Uganda’ in Fenrich J, P Galizzi, TE Higgins (eds), in *The Future of African Customary Law* (CUP 2011) 446.

Uchegbu A, 'The Repugnancy of the Repugnancy Doctrine' (1981) 2 The Attorney 13
Udombana NJ, 'So Far, So Fair: The Local Remedies Rule in the Jurisprudence of the African Commission on Human and Peoples' Rights' (2003) 97 AJIL 1.
US Department of State, 'Sierra Leone 2018 Human Rights Report: Executive Summary, Country Reports on Human Rights Practices for 2018' < https://www.state.gov/wp-content/uploads/2019/03/Sierra-Leone-2018.pdf> accessed 16 February 2020.
Van der Vliet V, *'Traditional Husbands, Modern Wives? Constructing Marriages in a South African Township' (1991) African Studies 236.*
Viljoen F, 'Admissibility Under the African Charter' in Evans MD and Murray R (eds), *The African Charter on Human and Peoples' Rights: the System in Practice, 1986–2000* (Cambridge UP 2002) 61.
Vojdik V, 'Towards a Gender Analysis of Sexual Violence Against Men and Boys in Conflict: Incorporating Masculinities Theory into Feminist Theories of Sexual Violence Against Women' in Mouthaan S and O. Jurasz (eds.), *Gender and War: International and Transitional Justice Perspectives* (Intersentia 2019) 95.
Walby S, 'Theorising Patriarchy' (1989) 23 Sociology 213.
Waldorf L, 'Just Peace? Integrating DDR and Transitional Justice' Context' in Chandra Sriram et al.(eds.), *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants* (Taylor & Francis Group 2012) 62.
WHO, 'Understanding and Addressing Violence against Women: Health Consequences' 11 November 2012 <https://apps.who.int/iris/bitstream/handle/10665/77432/WHO_RHR_12.36_eng.pdf> accessed 25 March 2020.
WHO, 'Violence Against Women' 9 March 2021 < https://www.who.int/news-room/fact-sheets/detail/violence-against-women#:~:text=Estimates%20published%20by%20WHO%20indicate,violence%20is%20intimate%20partner%20violence> accessed 20 November 2022.
Wilets JD, 'Conceptualizing Violence: Present and Future Developments in International Law: Panel III: Sex and Sexuality: Violence and Culture in the New International Order: Conceptualizing Private Violence against Sexual Minorities as Gendered Violence: An International and Comparative Perspective' (1997) 50 Alb. L. Rev. 989
Wittig M., 'One is not Born a Woman' (1981) 1 Feminist Issues 47.
Wood AN, 'A Cultural Rite of Passage or a Form of Torture: Female Genital Mutilation from an International Law Perspective' (2001) 12 Hastings Women L. J. 347
Woodman GR, 'A Survey of Customary Law in Africa in Search of Lessons for the Future' in Fenrich J, P Galizzi, TE Higgins (eds), *The Future of African Customary Law* (Cambridge UP 2011) 9.

Worugji IME, and RO Egbe, 'Judicial Protection of Women's Rights in Nigeria: The Regrettable Decision in Mojekwu v. Iwuchukwu' (2013) 16 U Botswana LJ 59.
Yuk JWP and JFH Yee, 'Sexual Intercourse as Rape under the State Policy of Forced Marriage: A Crime against Humanity' (2010) 2 City U. H.K. L. Rev. 161

Books

African Rights and Leggat-Smith Y, *Rwanda-Not So Innocent: When Women Become Killers* (African Rights, 1995)
Alie JAD, *A New History of Sierra Leone* (Macmillan 1990)
Allott A, *The Limits of Law* (Butterworth 1980)
Amnesty International, *Sierra Leone: Rape and Murder of Child Must be Catalyst for Real Change* (AI 2020)
--------------------------, 'Sierra Leone: Amnesty International's Recommendations' (Commonwealth Heads of Government Meeting, Durban, November 1999)
--------------------------, *Sierra Leone: The Implementation of Key TRC Recommendations: Priorities in 2008 and Beyond* (AI 2008)
Annan KA, *We the Peoples: the Role of the United Nations in the 21st Century* (UN 2000)
Banks O, *Faces of Feminism: A Study of Feminism as a Social Movement* (Martin Roberson 1981)
Bederman DJ, *Custom as a Source of Law* (CUP 2010)
Barnett H, *Sourcebook on Feminist Jurisprudence* (Cavendish 1997)
Bassiouni CM, *Crimes Against Humanity in International Criminal Law* (Springer 1999)
Baumeister H, *Sexualised Crimes, Armed Conflict and the Law: The International Criminal Court and the Definitions of Rape and Forced Marriage* (Routledge 2018)
Bernhardt R et. al. (eds.) *Encyclopedia of Public International Law* (vol. 2, North-Holland 1992-2000).
Berghs M, *War and Embodied Memory: Becoming Disabled in Sierra Leone* (Ashgate 2012)
Bernhardt R, P Macalister-Smith and Max-Planck-Institut für Ausländisches Öffentliches Recht und Völkerrecht, *Encyclopedia of Public International Law* (vol. 2, Elsevier 1992)
Bledsoe C, *Women and Marriage in Kpelle Society* (Stanford UP 1980)
Boonzaaier E and SJ Sharp, *South African Keywords: The Uses & Abuses of Political Concepts* (John Phillip 1988)
Bridgeman J and S Mills, *Feminist Perspectives on Law: Law's Engagement with the Female Body* (Sweet and Maxwell 1998)???

Brownmiller S, *Against Our Will: Men, Women and Rape* (Simon and Schuster 1975)
Cambridge Academic Content Dictionary (Cambridge UP 2013)
Carline A and P Easteal, *Shades of Grey: Domestic and Sexual Violence Against Women* (Routledge 2014)
Carlson K and D Mazurana, *Forced Marriage Within the Lord's Resistance Army, Uganda* (Feinstein International Centre 2008)
Chanock M, *Law, Custom and Social Order, the Colonial Experience in Malawi and Zambia* (CUP 1985)
Charlesworth H and C Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester UP 2000)
Cleland K, *Irregular Unions: Clandestine Marriage in Early Modern English Literature* (Cornell UP 2021).
Conaghan J, *Law and Gender* (Clarendon Law Series) (OUP 2013)
Conteh B and R Pratt, *Sierra Leone: Seeking Justice for Rape Survivors* (IWPR 2016)
Coulter C, *Bush Wives and Girl Soldiers: Women's Lives through War and Peace in Sierra Leone* (Cornell UP 2009)
Cuskelly K, *Customs and Constitutions: State Recognition of Customary Law Around the World* (Gland: IUCN 2012)
Daly M, *Gyn/Ecology: A Metaethics of Radical Feminism* (Beacon Press 1978)
De Beauvoir S, *The Second Sex* (Jonathan Cape 1953)
De Langis T, J Strasser, T Kim and S Taing, *Like Ghost Changes Body: A Study on the Impact of Forced Marriage under the Khmer Rouge Regime* (Transcultural Psychosocial Organisation 2014).
Denov M, *Child Soldiers: Sierra Leone's Revolutionary United Front* (CUP 2010)
Dobash RE and RP Dobash, *Violence against Wives: A Case Against the Patriarchy* (Free Press 1979)
Dryden J, *Conquest of Grenada by the Spaniards* (London 1672)
Eades J, *The Yoruba Today* (CUP 1980)
ECOSOC, ECA, *Women in the Traditional African Societies* (Urban Problems: the Role of Women in Urban Development Workshop, Addis Ababa, September 1963)
Edwards A, *Violence against Women under International Human Rights Law* (Cambridge UP 2011)
Foray CP, Historical Dictionary of Sierra Leone (Scarecrow Press 1977)
Fortin K, *The Accountability of Armed Groups under Human Rights Law* (Oxford UP 2017)
Foucault M, *Language, Counter-Memory* (Cornell UP 1996)
Franssen R, *Peace and Unquiet: The Failure of Transitional Justice Mechanisms in Sierra Leone* (DPhil, King's College London 2015)

Fraser N, *Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation* (Tanner Lectures on Human Values at the Stanford University, April 1996)
Garcia-Moreno C et. al., *WHO Multi-Country Study on Women's Health and Domestic Violence Against Women: Initial Results on Prevalence, Health Outcomes and Women's Responses* (WHO 2005)
Garner B (ed), *Black's Law Dictionary* (7th edn, West Pub. Co. 1999)
Gill AK and S Anitha (eds.), *Forced Marriage: Introducing a Social Justice and Human Rights Perspective* (Zed Bks 2011)
Global Summit to End Sexual Violence in Conflict, London, 2014 <https://www.govuk/government/topical-events/sexual-violence-in-conflict> accessed 14 July 2021.
Goertz G and GA Mazur, (eds) *Politics, Gender, and Concepts: Theory and Methodology* (CUP 2008)
Goldstein AT and MA Schuler, *Gender Violence: The Hidden War Crime* (Women, Law & Development International 1998)
Government of Sierra Leone, *Contribution from the Judiciary of Sierra Leone to the Thematic Report on "Women's and Girls' Sexual and Reproductive Health and Rights in Situation of Crisis* (Presentation to the 47th Session of the Human Rights Council, August 2020)
Government Offices of Sweden, *Patriarchal Violence – an Attack on Human Security* (2006)
Griswold C, *Forgiveness: a Philosophical Exploration* (Cambridge UP 2007)
The Hague Principles on Sexual Violence < https://4genderjustice.org/ftp-files/publications/The-Hague-Principles-on-Sexual-Violence.pdf > accessed 28 August 2023.
Halley J, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton UP 2006)
Harrell MC et al., *A Compendium of Sexual Assault Research* (RAND 2009)
Harrell-Bond BE and U Rijnsdorp, *Family Law in Sierra Leone: a Research Report* (Afrlka-Studlecentrum 1975)
Hayner P, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (Routledge 2011)
Higgins R et al., *Oppenheim's International Law, vol. 1, Peace* (Oxford UP 2017)
Jennings R and A Watts (eds), *Oppenheim's International Law: United Nations* (9th ed., OUP 2008)
Hoffman D, *The War Machines: Young Men and Violence in Sierra Leone and Liberia* (Duke UP 2011)
Hoffman J, *Gender and Sovereignty: Feminism, the State and International Relations* (Palgrave 2001)
Hooks B, *Feminist Theory from Margin to Center* (Pluto Press 2000)
----------, *The Will to Change: Men, Masculinity, and Love* (Atria Books 2003)

Hughes C and Oxfam Canada, *Legislative Wins, Broken Promises Gaps in Implementation of Laws on Violence Against Women and Girls* (Oxfam Research Report 2017).
Human Rights Watch, *Annan Must Reject Amnesty for Sierra Leone Crimes* (HRW 1999)
---------------------------, *Shattered Lives: Sexual Violence During the Rwandan Genocide and its Aftermath* (HRW 1996)
---------------------------, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo* (HRW 2009).
---------------------------, *"We'll Kill You If You Cry": Sexual Violence in the Sierra Leone Conflict* (HRW 2003)
Humphreys M and J Weinstein, *What the Fighters Say: A Survey of Ex-combatants in Sierra Leone* (Center on Globalisation and Sustainable Development 2003)
IRIN, Sierra Leone: *'Forced Marriage' Conviction a First* (IRIN, 2009)
Jalloh CC and S Meisenberg, *The Law Reports of the Special Court for Sierra Leone: Prosecutor v. Brima, Kamara and Kanu (The AFRC Case) Volume 1* (Martinus Nijhoff Pub. 2012)
Joko Smart HM, *Sierra Leone Customary Family Law* (Fourah Bay College Bookshop Ltd 1983)
Kambarami M, *Femininity, Sexuality and Culture: Patriarchy and Female Subordination in Zimbabwe* (ARSRC 2006)
Kelly L, *Surviving Sexual Violence* (Polity Press 1988)
Kelsen H, *The Law of the United Nations: a Critical Analysis of its Fundamental Problems* (Stevens 1950)
Kolajo AA, *Customary Law in Nigeria through the Cases* (Spectrum Bks 2000)
Kuper H, *The Swazi: A South African Kingdom* (Holt, Rinehart and Winston 1963)
Leach M, *Rainforest Relations: Gender and Resource Use among the Mende of Gola, Sierra Leone* (Edinburgh UP 1994)
Lerner G, *The Creation of Patriarchy* (OUP 1989)
Lesthaeghe R (ed.) *Reproduction and Social Organization in Sub-Saharan Africa* (Berkeley 1989)
Levit N and RMR Verchick, *Feminist Legal Theory: A Primer* (New York UP 2006)
Lindsey C, *Women Facing War: ICRC Study on the Impact of Armed Conflict on Women* (ICRC 2001)
MacKinnon CA, *Only Words* (Harvard UP 1993).
-----------------, *Sexual Harassment: Its First Decade in Court* (na 1993).
-----------------, *Toward a Feminist Theory of the State* (Harvard UP 1989).
Manjoo R and J Jones (eds.) *The Legal Protection of Women from Violence: Normative Gaps in International Law* (Routledge 2018).

Mazurana D and C Khristopher, *From Combat to Community: Women and Girls of Sierra Leone* (Hunt Alternatives Fund 2004)
Millett K, *Sexual Politics* (Rupert Hart-Davis 1970)
MSWGCA, *Sierra Leone National Action Plan on GBV: Building a Better Sierra Leone Free From Violence against Women and Children, 2012-2016* (MSWGCA September 2012)
Momsen J, *Gender and Development* (Routledge 2004)
Morris P, *Literature and Feminism* (Wiley 1993)
Mukasa RS, *The African Women's Protocol: Harnessing a Potential Force for Positive Change* (Oxfam, 2009)
Ndulo M, African Customary Law, Customs, and Women's Rights (Cornell Law Faculty 2011) 187 <http://scholarship.law.cornell.edu/facpub/187> accessed 2 May 2021
Nesiah V, Truth Commissions and Gender: Principles, Policies and Procedures (ICTJ 2006)
Nettheim G and H McRae, *Indigenous Legal Issues Commentary and Materials* (4th edn, Thomson Reuters 2009)
Oduyoye MA and Kanyoro MRA, *The Will to Arise: Women, Tradition, and the Church in Africa* (Wipf & Stock Pub. 2005)
Opoku K, *The Law of Marriage in Ghana. A Study of Legal Pluralism* (A. Metzner 1976)
O'Rourke C, *Gender Politics in Transitional Justice* (Routledge 2013)
Osiel M, *Making Sense of Mass Atrocity* (Cambridge UP 2009)
Oyewumi O, *African Women and Feminism: Reflecting on the Politics of Sisterhood* (Africa World Press 2003)
The Oxford International Encyclopaedia of Legal History (vol. 4, Oxford UP 2009).
Peterson VS and AS Runyan, *Global Gender Issues* (Westview Press 1999)
Phillips A (ed.), *A Survey of African Marriage and Family Life* (1953)
------------, *Engendering Democracy* (Polity Press 1991)
Richards P, *Fighting for the Rainforest: War, Youth and Resources in Sierra Leone* (James Currey Paper 1996)
Ronzitti N, *Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity* (Martinus Nijhoff Pub. 1985)
Pateman C, *The Sexual Contract* (Sandford UP 1988)
Physicians for Human Rights, *War-Related Sexual Violence in Sierra Leone: A Population Based Assessment* (1 June 2002)
Pratt M and Valasek K, 'Sierra Leone' in Miranda Gaanderse and Kristin Valasek (eds.), *The Security Sector and Gender in West Africa: A Survey of Police, Defence, Justice and Penal Services in ECOWAS States* (DCAF 2011).
Priddy A, *The Situation of Women's Rights 20 Years after the Vienna World Conference on Human Rights* (Geneva Academy 2014).
Roche D, *Accountability in Restorative Justice* (Oxford UP 2003)

Ross F, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa* (Pluto Press 2003).
Sanusi SAA, *The Mule of the World: Race, Culture and Essentialism in Feminist Approaches to International Human Rights Law – An African Perspective* (PhD Thesis, LSE 1999)
Sarooshi D, *The United Nations and the Development of Collective Security* (OUP 1999)
Seelinger KT and J Freccero, *The Long Road: Accountability for Sexual Violence in Conflict and Post-Conflict Settings* (Human Rights Center, Univ. of California 2015)
Shaw MN, *International Law* (4th ed., Cambridge UP 1997)
Shaw R, *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone: Special Report* (USIP 2005)
Sierra Leone Truth and Reconciliation Commission, *Witness to Truth: Final Report of the TRC* (Graphic Packaging Ltd. 2004)
Simma B et. al., (eds.) *The Charter of the United Nations: A Commentary* (3rd ed, OUP 2012)
Simonen K, *The State Versus the Individual: the Unresolved Dilemma of Humanitarian Intervention* (Martinus Nijhoff 2011)
Sjoberg L, *Gender, Justice and the Wars in Iraq: A Feminist Reformulation of Just War Theory* (Lexington Bks 2006).
South African Concise Oxford Dictionary (OUP 2002).
South African Law Commission, *The Harmonisation of the Common Law and the Indigenous Law: Report on Conflicts of Law. Project 90* (1999) http://www.justice.gov. za/salrc/reports/r_prj90_conflict_1999sep.pdf accessed 11 January 2016.
Steans J, *Gender and International Relations: An Introduction* (Rutgers UP 1998)
Tobin BM, *Why Customary Law Matters: The Role of Customary Law in the Protection of Indigenous Peoples' Human Rights* (PhD Thesis NUI Galway 2012)
Tobin B and E Taylor, *Across the Great Divide: A Case Study of Complementarity and Conflict between Customary Law and TK Protection Legislation in Peru* (Initiative for the Prevention of Biopiracy Research Documents, Year IV, No. 11. Lima: Sociedad Peruana de Derecho Ambiental 2009)
US Department of State, '2016 Report on International Religious Freedom - Sierra Leone' 15 August 2017. <https://www.refworld.org/reference/annualreport/usdos/2017/en/118294> accessed 05 March 2023.
-------------------------------, Sierra Leone 2018: Human Rights Report: Executive Summary -Country Reports on Human Rights Practices for 2018 <

https://www.state.gov/wp-content/uploads/2019/03/Sierra-Leone-2018.pdf> accessed 16 January 2020.
-------------------------------, 'Zambia 2014 Country Report: Executive Summary', 27 < https://2009-2017.state.gov/documents/organization/236632.pdf > accessed 12 October 2015.
Villiger ME, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff 2009)
Walby S, *Theorising Patriarchy* (Blackwell Pub. 1990)
Weber M, *From Max Weber: Essays in Sociology* (OUP 1946)
Wertheimer A, *Coercion* (Princeton UP 1987)
West R, *Caring for Justice* (New York UP 1997)
Wa Mutua M, *The African Human Rights System: A Critical Evaluation* (UNDP, Human Development Report, 2000).